
CHAPTER 198
RSMo 2001

CONVALESCENT, NURSING AND
BOARDING HOMES

GENERALLY

198.003. Citation of the law. 198.003 to Sections 198.003 to 198.186 shall be known and may be cited as the "**Omnibus Nursing Home Act**".

(L. 1979 S.B. 328, et al. § 2)

198.006. Definitions. As used in sections 198.003 to 198.186, unless the context clearly indicates otherwise, the following terms mean:

(1) "**Abuse**", the infliction of physical, sexual, or emotional injury or harm;

(2) "**Administrator**", the person who is in general administrative charge of a facility;

(3) "**Affiliate**":

(a) With respect to a partnership, each partner thereof;

(b) With respect to a limited partnership, the general partner and each limited partner with an interest of five percent or more in the limited partnership;

(c) With respect to a corporation, each person who owns, holds or has the power to vote five percent or more of any class of securities issued by the corporation, and each officer and director;

(d) With respect to a natural person, any parent, child, sibling, or spouse of that person;

(4) "**Department**", the Missouri department of health and senior services;

(5) "**Emergency**", a situation, physical condition or one or more practices, methods or operations which presents imminent danger of death or serious physical or mental harm to residents of a facility;

(6) "**Facility**", any residential care facility I, residential care facility II, immediate care facility, or skilled nursing facility;

(7) "**Health care provider**", any person providing health care services or goods to residents and who receives funds in payment for such goods or services under Medicaid;

(8) "**Intermediate care facility**", any premises, other than a residential care facility I, residential care

facility II, or skilled nursing facility, which is utilized by its owner, operator, or manager to provide twenty-four hour accommodation, board, personal care, and basic health and nursing care services under the daily supervision of a licensed nurse and under the direction of a licensed physician to three or more residents dependent for care and supervision and who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility;

(9) "**Manager**", any person other than the administrator of a facility who contracts or otherwise agrees with an owner or operator to supervise the general operation of a facility, providing such services as hiring and training personnel, purchasing supplies, keeping financial records, and making reports;

(10) "**Medicaid**", medical assistance under section 208.151, RSMo, et seq., in compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42 U.S.C. 301 et seq.), as amended;

(11) "**Neglect**", the failure to provide, by those responsible for the care, custody, and control of a resident in a facility, the services which are reasonable and necessary to maintain the physical and mental health of the resident, when such failure presents either an imminent danger to the health, safety or welfare of the resident or a substantial probability that death or serious physical harm would result;

(12) "**Operator**", any person licensed or required to be licensed under the provisions of sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

(13) "**Owner**", any person who owns an interest of five percent or more in:

(a) The land on which any facility is located;

(b) The structure or structures in which any facility is located;

(c) Any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure in or on which a facility is located; or

(d) Any lease or sublease of the land or structure in or on which a facility is located. "Owner" does not include a holder of a debenture or bond purchased at public issue nor does it include any regulated lender unless the entity or person directly or through a subsidiary operates a facility;

(14) **"Protective oversight"**, an awareness twenty-four hours a day of the location of a resident, the ability to intervene on behalf of the resident, the supervision of nutrition, medication, or actual provisions of care, and the responsibility for the welfare of the resident, except where the resident is on voluntary leave;

(15) **"Resident"**, a person who by reason of aging, illness, disease, or physical or mental infirmity receives or requires care and services furnished by a facility and who resides or boards in or is otherwise kept, cared for, treated or accommodated in such facility for a period exceeding twenty-four consecutive hours;

(16) **"Residential care facility I"**, any premises, other than a residential care facility II, intermediate care facility, or skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour care to three or more residents, who are not related within the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility and who need or are provided with shelter, board, and with protective oversight, which may include storage and distribution or administration of medications and care during short-term illness or recuperation;

(17) **"Residential care facility II"**, any premises, other than a residential care facility I, an intermediate care facility, or a skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour accommodation, board, and care to three or more residents who are not related within the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility, and who need or are provided with supervision of diets, assistance in personal care, storage and distribution or administration of medications, supervision of health care under the direction of a licensed physician, and protective oversight, including care during short-term illness or recuperation;

(18) **"Skilled nursing facility"**, any premises, other than a residential care facility I, a residential care facility II, or an intermediate care facility, which is utilized by its owner, operator or manager to provide for twenty-four hour accommodation, board and skilled nursing care and treatment services to at least three residents who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care and treatment services are those services commonly performed by or under the supervision of a registered professional nurse for individuals requiring twenty-four hours a day care by licensed nursing personnel including acts of observation, care

and counsel of the aged, ill, injured or infirm, the administration of medications and treatments as prescribed by a licensed physician or dentist, and other nursing functions requiring substantial specialized judgment and skill;

(19) **"Vendor"**, any person selling goods or services to a health care provider;

(20) **"Voluntary leave"**, an off premise leave initiated by:

(a) A resident that has not been declared mentally incompetent or incapacitated by a court; or

(b) A legal guardian of a resident that has been declared mentally incompetent or incapacitated by a court.

(L. 1979 S.B. 628, et al. § 3, A.L. 1984 S.B. 451, A.L. 1987 S.B. 277, A.L. 2003 S.B. 534 merged with S.B. 556& 311)

198.009. Department of social services to administer – promulgation of rules, procedure -- cooperation of other agencies. 1. The provisions of sections 198.003 to 198.186 shall be administered by the department. The department shall have authority to promulgate rules and regulations for the purposes of administering sections 198.003 to 198.186. All such rules and regulations shall be promulgated in accordance with this section and chapter 536, RSMo. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

2. All agencies of the state or any of its political subdivisions shall assist and cooperate with the department whenever necessary to carry out the department's responsibility under sections 198.003 to 198.186.

(L. 1979 S.B. 328, et al. § 4, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3)

198.012. Provisions of sections 198.003 to 198.136 not to apply, when – exempt entities may be licensed. 1. The provisions of sections 198.003 to 198.136 shall not apply to any of the following entities:

(1) Any hospital, facility or other entity operated by the state or the United States;

(2) Any facility or other entity otherwise licensed by the state and operating exclusively under such license and within the limits of such license, unless the activities and services are or are held out as being activities or services normally provided by a licensed facility under sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, except

hospitals licensed under the provisions of chapter 197, RSMo;

(3) Any hospital licensed under the provisions of chapter 197, RSMo, provided that the residential care facility II, intermediate care facility or skilled nursing facility are physically attached to the acute care hospital; and provided further that the department of health and senior services in promulgating rules, regulations and standards pursuant to section 197.080, RSMo, with respect to such facilities, shall establish requirements and standards for such hospitals consistent with the intent of this chapter, and sections 198.067, 198.070, 198.090, 198.093 and 198.139 to 198.180 shall apply to every residential care facility II, intermediate care facility or skilled nursing facility regardless of physical proximity to any other health care facility;

(4) Any facility licensed pursuant to sections 630.705 to 630.760, RSMo, which provides care, treatment, habilitation and rehabilitation exclusively to persons who have a primary diagnosis of mental disorder, mental illness, mental retardation or developmental disabilities, as defined in section 630.005, RSMo;

(5) Any provider of care under a life care contract, except to any portion of the provider's premises on which the provider offers services provided by an intermediate care facility or skilled nursing facility as defined in section 198.006. For the purposes of this section, "provider of care under a life care contract" means any person contracting with any individual to furnish specified care and treatment to the individual for the life of the individual, with significant prepayment for such care and treatment.

2. Nothing in this section shall prohibit any of these entities from applying for a license under sections 198.003 to 198.136.

(L. 1979 S.B. 628, et al. § 5, A.L. 1980 H.B. 1724, A.L. 1982 S.B. 698, A.L. 1984 S.B. 451, A.L. 1988 S.B. 602, A.L. 1989 H.B. 210)

CROSS REFERENCE: Missouri veterans homes, nursing home license not required, RSMo 42.130.

198.014. Evaluation of compliance with chapter 198, departments of health and social services – report to governor and general assembly, when. The department of health and senior services, with the full cooperation of and in conjunction with the department of social services, shall evaluate the implementation and compliance of the provisions of subdivision (3) of subsection 1 of section 198.012 in which rules, requirements, regulations and standards pursuant to section 197.080, RSMo, for residential care facilities II,

intermediate care facilities and skilled nursing facilities attached to an acute care hospital are consistent with the intent of chapter 198. A report of the differences found in the evaluation conducted pursuant to this section shall be made jointly by the departments of health and senior services and social services to the governor and members of the general assembly by January 1, 2000.

(L. 1999 S.B. 8 & 173 § 2)

198.015. License, when required – duration – content – effect of change of ownership – temporary permits – penalty for violation. --

1. No person shall establish, conduct or maintain a residential care facility I, residential care facility II, intermediate care facility, or skilled nursing facility in this state without a valid license issued by the department. Any person violating this subsection is guilty of a class A misdemeanor. Any person violating this subsection wherein abuse or neglect of a resident of the facility has occurred is guilty of a class D felony. The department of health and senior services shall investigate any complaint concerning operating unlicensed facilities. For complaints alleging abuse or neglect, the department shall initiate an investigation within twenty-four hours. All other complaints regarding unlicensed facilities shall be investigated within forty-five days.

2. If the department determines the unlicensed facility is in violation of sections 198.006 to 198.186, the department shall immediately notify the local prosecuting attorney or attorney general's office.

3. Each license shall be issued only for the premises and persons named in the application. A license, unless sooner revoked, shall be issued for a period of up to two years, in order to coordinate licensure with certification in accordance with section 198.045.

4. If during the period in which a license is in effect, a licensed operator which is a partnership, limited partnership, or corporation undergoes any of the following changes, or a new corporation, partnership, limited partnership or other entity assumes operation of a facility whether by one or by more than one action, the current operator shall notify the department of the intent to change operators and the succeeding operator shall within ten working days of such change apply for a new license:

(1) With respect to a partnership, a change in the majority interest of general partners;

(2) With respect to a limited partnership, a change in the general partner or in the majority interest of limited partners;

(3) With respect to a corporation, a change in the persons who own, hold or have the power to vote the majority of any class of securities issued by the corporation.

5. Licenses shall be posted in a conspicuous place on the licensed premises.

6. Any license granted shall state the maximum resident capacity for which granted, the person or persons to whom granted, the date, the expiration date, and such additional information and special limitations as the department by rule may require.

7. The department shall notify the operator at least sixty days prior to the expiration of an existing license of the date that the license application is due. Application for a license shall be made to the department at least thirty days prior to the expiration of any existing license.

8. The department shall grant an operator a temporary operating permit in order to allow for state review of the application and inspection for the purposes of relicensure if the application review and inspection process has not been completed prior to the expiration of a license and the operator is not at fault for the failure to complete the application review and inspection process.

9. The department shall grant an operator a temporary operating permit of sufficient duration to allow the department to evaluate any application for a license submitted as a result of any change of operator.

(L. 1979 S.B. 328, et al. § 6, A.L. 1984 S.B. 451, A.L. 1987 S.B. 277, A.L. 1988 S.B. 602, A.L. 1994 H.B. 1335 & 1381, A.L. 1999 S.B. 326, A.L. 2003 S.B. 556 & 311)

CROSS REFERENCES:

License for administrator of residential care facilities II required, limitations, RSMo 344.020

Skilled nursing care facilities, a license for residential care facilities II insufficient, RSMo 344.020

198.018. Applications for license, how made – fees – affidavit – documents required to be files – nursing facility quality of care fund created – facilities may not be licensed by political subdivisions, but they may inspect. 1. Applications for a license shall be made to the department by the operator upon such forms and including such information and documents as the department may reasonably require by rule or regulation for the purposes of administering sections 198.003 to 198.186, section 198.200, and sections 208.030 and 208.159, RSMo.

2. The applicant shall submit an affidavit under oath that all documents required by the department to

be filed pursuant to this section are true and correct to the best of his knowledge and belief, that the statements contained in the application are true and correct to the best of his knowledge and belief, and that all required documents are either included with the application or are currently on file with the department.

3. The application shall be accompanied by a license fee in an amount established by the department. The fee established by the department shall not exceed six hundred dollars, and shall be a graduated fee based on the licensed capacity of the applicant and the duration of the license. A fee of not more than fifty dollars shall be charged for any amendments to a license initiated by an applicant. In addition, facilities certified to participate in the Medicaid or Medicare programs shall pay a certification fee of up to one thousand dollars annually, payable on or before October first of each year. The amount remitted for the license fee, fee for amendments to a license, or certification fee shall be deposited in the state treasury to the credit of the "Nursing Facility Quality of Care Fund", which is hereby created. All investment earnings of the nursing facility quality of care fund shall be credited to such fund. All moneys in the nursing facility quality of care fund shall, upon appropriation, be used by the division of aging for conducting inspections and surveys, and providing training and technical assistance to facilities licensed under the provisions of this chapter. The unexpended balance in the nursing facility quality of care fund at the end of the biennium is exempt from the provisions of sections 33.080, RSMo. The unexpended balance in the nursing facility quality of care fund shall not revert to the general revenue fund, but shall accumulate in the nursing facility quality of care fund from year to year.

4. Within ten working days of the effective date of any document that replaces, succeeds, or amends any of the documents required by the department to be filed pursuant to this section, an operator shall file with the department a certified copy of such document. If the operator knowingly fails to file a required document or provide any information amending any document within the time provided for in this section, a circuit court may, upon application of the department or the attorney general, assess a penalty of up to fifty dollars per document for each day past the required date of filing.

5. If an operator fails to file documents or amendments to documents as required pursuant to this section and such failure is part of a pattern or practice of concealment, such failure shall be

sufficient grounds for revocation of a license or disapproval of an application for a license.

6. Any facility defined in subdivision (8), (15), (16) or (17) of section 198.006 that is licensed by the state of Missouri pursuant to the provisions of section 198.015 may not be licensed, certified or registered by any other political subdivision of the state of Missouri whether or not it has taxing power, provided, however, that nothing in this subsection shall prohibit a county or city, otherwise empowered under law, to inspect such facility for compliance with local ordinances of food service or fire safety.

(L. 1979 S.B. 328, et al. § 7, A.L. 1984 S.B. 451, A.L. 1987 S.B. 277, A.L. 1988 S.B. 602, A.L. 1994 H.B. 1335 & 1381)

198.022. Duty of department on receipt of application – duty upon denial – department may copy records at its expense – removal of records prohibited – inspection, when – court order to inspect – out-of-state applicants, compliance history may be requested. 1. Upon receipt of an application for a license to operate a facility, the department shall review the application, investigate the applicant and the statements sworn to in the application for license and conduct any necessary inspections. A license shall be issued if the following requirements are met:

(1) The statements in the application are true and correct;

(2) The facility and the operator are in substantial compliance with the provisions of sections 198.003 to 198.096 and the standards established thereunder;

(3) The applicant has the financial capacity to operate the facility;

(4) The administrator of a residential care facility II, a skilled nursing facility, or an intermediate care facility is currently licensed under the provisions of chapter 344, RSMo;

(5) Neither the operator nor any principals in the operation of the facility have ever been convicted of a felony offense concerning the operation of a long-term health care facility or other health care facility or ever knowingly acted or knowingly failed to perform any duty which materially and adversely affected the health, safety, welfare or property of a resident, while acting in a management capacity. The operator of the facility or any principal in the operation of the facility shall not be under exclusion from participation in the Title XVIII (Medicare) or Title XIX (Medicaid) program of any state or territory;

(6) Neither the operator nor any principals involved in the operation of the facility have ever been convicted of a felony in any state or federal court arising out of conduct involving either management of a long-term care facility or the provision or receipt of health care;

(7) All fees due to the state have been paid.

2. Upon denial of any application for a license, the department shall so notify the applicant in writing, setting forth therein the reasons and grounds for denial.

3. The department may inspect any facility and any records and may make copies of records, at the facility, at the department's own expense, required to be maintained by sections 198.003 to 198.096 or by the rules and regulations promulgated thereunder at any time if a license has been issued to or an application for a license has been filed by the operator of such facility. Copies of any records requested by the department shall be prepared by the staff of such facility within two business days or as determined by the department. The department shall not remove or disassemble any medical record during any inspection of the facility, but may observe the photocopying or may make its own copies if the facility does not have the technology to make the copies. In accordance with the provisions of section 198.525, the department shall make at least two inspections per year, at least one of which shall be unannounced to the operator. The department may make such other inspections, announced or unannounced, as it deems necessary to carry out the provisions of sections 198.003 to 198.136.

4. Whenever the department has reasonable grounds to believe that a facility required to be licensed under sections 198.003 to 198.096 is operating without a license, and the department is not permitted access to inspect the facility, or when a licensed operator refuses to permit access to the department to inspect the facility, the department shall apply to the circuit court of the county in which the premises is located for an order authorizing entry for such inspection, and the court shall issue the order if it finds reasonable grounds for inspection or if it finds that a licensed operator has refused to permit the department access to inspect the facility.

5. Whenever the department is inspecting a facility in response to an application from an operator located outside of Missouri not previously licensed by the department, the department may request from

the applicant the past five years compliance history of all facilities owned by the applicant located outside of this state.

(L. 1979 S.B. 328, et. al § 8, A.L. 1984 S.B. 451, A.L. 1988 S.B. 602, A.L. 1994 H.B. 1335 & 1381, A.L. 2003 S.B. 556 & 311)

198.026. Noncompliance, how determined – procedure to correct – notice – reinspection – probationary license. 1. Whenever a duly authorized representative of the department finds upon an inspection of a facility that it is not in compliance with the provisions of sections 198.003 to 198.096 and the standards established thereunder, the operator or administrator shall be informed of the deficiencies in an exit interview conducted with the operator or administrator or his designee. The department shall inform the operator or administrator, in writing, of any violation of a class I standard at the time the determination is made. A written report shall be prepared of any deficiency for which there has not been prompt remedial action, and a copy of such report and a written correction order shall be sent to the operator or administrator by certified mail or other delivery service that provides a dated receipt of delivery at the facility address within ten working days after the inspection, stating separately each deficiency and the specific statute or regulation violated.

2. The operator or administrator shall have five working days following receipt of a written report and correction order regarding a violation of a class I standard and ten working days following receipt of the report and correction order regarding violations of class II or class III standards to request any conference and to submit a plan of correction for the department's approval which contains specific dates for achieving compliance. Within five working days after receiving a plan of correction regarding a violation of a class I standard and within ten working days after receiving a plan of correction regarding a violation of a class II or III standard, the department shall give its written approval or rejection of the plan. If there was a violation of any class I standard, immediate corrective action shall be taken by the operator or administrator and a written plan of correction shall be submitted to the department. The department shall give its written approval or rejection of the plan and if the plan is acceptable, a reinspection shall be conducted within twenty calendar days of the exit interview to determine if deficiencies have been corrected. If there was a violation of any class II standard and the plan of correction is acceptable, an unannounced reinspection shall be conducted between forty and ninety calendar days from the date of the exit conference to determine the status of all

previously cited deficiencies. If there was a violation of class III standards sufficient to establish that the facility was not in substantial compliance, an unannounced reinspection shall be conducted within one hundred twenty days of the exit interview to determine the status of previously identified deficiencies.

3. If, following the reinspection, the facility is found not in substantial compliance with sections 198.003 to 198.096 and the standards established thereunder or the operator is not correcting the noncompliance in accordance with the approved plan of correction, the department shall issue a notice of noncompliance, which shall be sent by certified mail or other delivery service that provides a dated receipt of delivery to each person disclosed to be an owner or operator of the facility, according to the most recent information or documents on file with the department.

4. The notice of noncompliance shall inform the operator or administrator that the department may seek the imposition of any of the sanctions and remedies provided for in section 198.067, or any other action authorized by law.

5. At any time after an inspection is conducted, the operator may choose to enter into a consent agreement with the department to obtain a probationary license. The consent agreement shall include a provision that the operator will voluntarily surrender the license if substantial compliance is not reached in accordance with the terms and deadlines established under the agreement. The agreement shall specify the stages, actions and time span to achieve substantial compliance.

6. Whenever a notice of noncompliance has been issued, the operator shall post a copy of the notice of noncompliance and a copy of the most recent inspection report in a conspicuous location in the facility, and the department shall send a copy of the notice of noncompliance to the division of family services of the department of social services, the department of mental health, and any other concerned federal, state or local governmental agencies.

(L. 1979 S.B. 328, et al. § 9, A.L. 1984 S.B. 451, A.L. 1988 S.B. 602, A.L. 1994 H.B. 1335 & 1381)

198.027. On-site revisit not required, when. If a facility submits satisfactory documentation that establishes correction of any deficiency contained within the written report of deficiency required by section 198.026, an on-site revisit of such deficiency may not be required.

(L. 2003 S.B. 556 & 311)

198.029. Noncompliance – notice to operator and public, when – notice of noncompliance posted. The provisions of section 198.026 notwithstanding, whenever a duly authorized representative of the department finds upon inspection of a licensed facility, and the director of the department finds upon review, that the facility or the operator is not in substantial compliance with a standard or standards the violations of which would present either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result and which is not immediately corrected, the department shall:

(1) Give immediate written notice of the noncompliance to the operator, administrator or person managing or supervising the conduct of the facility at the time the noncompliance is found;

(2) Make public the fact that a notice of noncompliance has been issued to the facility. Copies of the notice shall be sent to appropriate hospitals and social service agencies;

(3) Send a copy of the notice of noncompliance to the division of family services of the department of social services, the department of mental health, and any other concerned federal, state or local government agencies. The facility shall post in a conspicuous location in the facility a copy of the notice of noncompliance and a copy of the most recent inspection report.

(L. 1979 S.B. 328, et al. § 13)

198.030. Posting of inspection reports at the facility. Every residential care facility I, residential care facility II, intermediate care facility, and skilled nursing facility shall post the most recent inspection report of the facility in a conspicuous place. If the operator determines that the inspection report of the facility contains individually identifiable health information, the operator may redact such information prior to posting the inspection report.

(L. 2003 S.B. 556 & 311)

198.032. Records, what confidential, what subject to disclosure – procedure – central registry to receive complaints of abuse and neglect, procedure – hotline caller log to be maintained. 1. Nothing contained in sections 198.003 to 198.186 shall permit the public disclosure by the department of confidential medical, social, personal or financial records of any resident in any facility, except when disclosed in a manner which does not identify any resident, or when ordered to do

so by a court of competent jurisdiction. Such records shall be accessible without court order for examination and copying only to the following persons or offices, or to their designees:

(1) The department or any person or agency designated by the department;

(2) The attorney general;

(3) The department of mental health for residents placed through that department;

(4) Any appropriate law enforcement agency;

(5) The resident, the resident's guardian, or any other person designated by the resident; and

(6) Appropriate committees of the general assembly and the state auditor, but only to the extent of financial records which the operator is required to maintain pursuant to sections 198.088 and 198.090.

2. Inspection reports and written reports of investigations of complaints, of substantiated reports of abuse and neglect received in accordance with section 198.070, and complaints received by the department relating to the quality of care of facility residents, shall be accessible to the public for examination and copying, provided that such reports are disclosed in a manner which does not identify the complainant or any particular resident. Records and reports shall clearly show what steps the department and the institution are taking to resolve problems indicated in said inspections, reports and complaints.

3. The department shall maintain a central registry capable of receiving and maintaining reports received in a manner that facilitates rapid access and recall of the information reported, and of subsequent investigations and other relevant information. The department shall electronically record and maintain a hotline caller log for the reporting of suspected abuse and neglect in long-term care facilities. Any telephone report of suspected abuse and neglect received by the department and such recorded reports shall be retained by the department for a period of one year after recording. The department shall in all cases attempt to obtain the name of any person making a report after obtaining relevant information regarding the alleged abuse or neglect. The department shall also attempt to obtain the address of any person making a report. The identity of the person making the report shall remain confidential.

(L. 1979 S.B. 328, et al. § 11, A.L. 1987 S.B. 277, A.L. 2003 S.B. 556 & 311)

198.036. Revocation of license – grounds – notice required. 1. The department may revoke a license in any case in which it finds that:

(1) The operator failed or refused to comply with class I or II standards, as established by the department pursuant to section 198.085; or failed or refused to comply with class III standards as established by the department pursuant to section 198.085, where the aggregate effect of such noncompliances presents either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result;

(2) The operator refused to allow representatives of the department to inspect the facility for compliance with standards or denied representatives of the department access to residents and employees necessary to carry out the duties set forth in this chapter and rules promulgated thereunder, except where employees of the facility are in the process of rendering immediate care to a resident of such facility;

(3) The operator knowingly acted or knowingly omitted any duty in a manner which would materially and adversely affect the health, safety, welfare or property of a resident;

(4) The operator demonstrated financial incapacity to operate and conduct the facility in accordance with the provisions of sections 198.003 to 198.096;

(5) The operator or any principals in the operation of the facility have ever been convicted of, or pled guilty or nolo contendere to a felony offense concerning the operation of a long-term health care facility or other health care facility, or ever knowingly acted or knowingly failed to perform any duty which materially and adversely affected the health, safety, welfare, or property of a resident while acting in a management capacity. The operator of the facility or any principal in the operation of the facility shall not be under exclusion from participation in the Title XVIII (Medicare) or Title XIX (Medicaid) program of any state or territory; or

(6) The operator or any principals involved in the operation of the facility have ever been convicted of or pled guilty or nolo contendere to a felony in any state or federal court arising out of conduct involving either management of a long-term care facility or the provision or receipt of health care.

2. Nothing in subdivision (2) of subsection 1 of this section shall be construed as allowing the

department access to information not necessary to carry out the duties set forth in sections 198.006 to 198.186.

3. Upon revocation of a license, the director of the department shall so notify the operator in writing, setting forth the reason and grounds for the revocation. Notice of such revocation shall be sent either by certified mail, return receipt requested, to the operator at the address of the facility, or served personally upon the operator. The department shall provide the operator notice of such revocation at least ten days prior to its effective date.

(L. 1979 S.B. 328, et al. § 12, A.L. 2003 S.B. 556 & 311)

198.039. License refused or revoked – review by administrative hearing commission – judicial review. 1. Any person aggrieved by an official action of the department either refusing to

issue a license or revoking a license may seek a determination thereon by the administrative hearing commission pursuant to the provisions of section 621.045, RSMo, et seq., except that the petition must be filed with the administrative hearing commission within fifteen days after the mailing or delivery of notice to the operator. It shall not be a condition to such determination that the person aggrieved seek a reconsideration, a rehearing or exhaust any other procedure within the department.

2. The administrative hearing commission may stay the revocation of such license, pending the commission's findings and determination in the cause, upon such conditions as the commission deems necessary and appropriate including the posting of bond or other security except that the commission shall not grant a stay or if a stay has already been entered shall set aside its stay, if upon application of the department the commission finds reason to believe that continued operation of a facility pending the commission's final determination would present an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result. In any case in which the department has refused to issue a license, the commission shall have no authority to stay or to require the issuance of a license pending final determination by the commission.

3. The administrative hearing commission shall make the final decision as to the issuance or revocation of a license. Any person aggrieved by a final decision of the administrative hearing commission, including the department, may seek judicial review of such decision by filing a petition

for review in the court of appeals for the district in which the facility is located. Review shall be had, except as modified herein, in accordance with the provisions of sections 621.189 and 621.193, RSMo.

(L. 1979 S.B. 328, et al. § 13)

198.042. Medical supervision for residents relying on spiritual healing not required. Nothing in sections 198.003 to 198.096, or the rules and regulations adopted pursuant thereto, shall be construed as authorizing the medical supervision, regulation or control of the remedial care or treatment of those residents who rely solely upon treatment by prayer or spiritual means in accordance with creed or tenets of any well recognized church or religious denomination. All remaining rules and regulations and minimum standards not in conflict with this section shall apply.

(L. 1979 S.B. 328, et al. § 14)

198.045. Participation in reimbursement programs under either Medicare or Medicaid, Title XVIII and Title XIX of the Social Security Act, (Title 42, United States Code, Sec. 1395x or 1396d), or other federal laws, shall be at the option of the individual facility. A skilled nursing facility or an intermediate care facility which chooses to participate in such programs shall be surveyed for certification for reimbursement and inspected for state licensure at the same time.

(L. 1979 S.B. 328, et al. § 15)

198.048. Different classifications for facility may exist on same premises, when. A skilled nursing, intermediate care, residential care facility II, or residential care facility I may exist on the same premises under the following circumstances:

(1) The skilled nursing, intermediate care, residential care facility II or residential care facility I is an identifiable unit thereof, such as an entire ward or contiguous wards, wing or floor of a building or a separate contiguous building and such identifiable unit is approved in writing by the department;

(2) The identifiable unit meets all the reasonable standards for such facility;

(3) Central services and facilities such as management services, nursing and other patient care services, building maintenance and laundry which are shared with other units are determined to be sufficient to meet the reasonable standards for such a facility.

(L. 1979 S.B. 328, et al. § 16, A.L. 1984 S.B. 451)

198.052. Records of facilities – when examined or audited – retention, how long – to accompany resident on transfer, when. 1. The state auditor, at the request of the department or on his own initiative, may examine and audit any records relating to the operation of any facility.

2. The director of the department may examine and audit, or cause to be examined and audited, any records relating to the operation of any facility.

3. Each facility shall retain all financial information, data and records relating to the operation and reimbursement of the facility for a period of not less than seven years.

4. Notwithstanding anything to the contrary in sections 198.003 to 198.186, 198.200, 202.905, 208.030, or 208.159, RSMo, the state auditor shall have the right to examine the records of any facility which he deems necessary in connection with any examination conducted pursuant to his statutory authority, and to disclose the results of any such examination including the identity of any facility examined, provided that the identity of any resident of any such facility shall not be divulged or made known by the state auditor.

5. All financial information, data and records of facilities under the provisions of sections 198.003 to 198.186, 198.200, 202.905, 208.030, or 208.159, RSMo, shall be open upon request for inspection, examination and audit by the director of the department, the state auditor, appropriate committees of the general assembly, and their designees, at all reasonable times.

6. Each facility shall retain medical records of each resident for five years after he leaves the facility. In the event the resident is less than twenty-one years of age, the records shall be retained for five years after the age of twenty-one years is reached. The time limitations of this subsection shall not apply when longer time limitations are specified in standards for facilities certified under Medicare or Medicaid, Title XVIII and Title XIX of the Social Security Act, (Title 42, United States Code, Sec. 1395x or 1396d).

7. In the event a new operator takes over a facility's operation, the original medical records of the residents of such facility shall be retained in the facility by the new operator.

8. In the event a resident is transferred from the facility, the resident shall be accompanied by a copy of his medical records.

(L. 1979 S.B. 328, et al. § 17)

198.055. Inspection by department valid for certain mental health patients, when. A facility may provide accommodations, board, health care or treatment, or personal services for residents placed through the department of mental health. Inspections made pursuant to provisions of sections 198.003 to 198.096 shall also serve as the inspections required under the provisions of chapter 630, RSMo, except for inspections and visits to determine appropriateness of resident placement, to develop and review treatment plans, and to monitor the conditions and status of residents.

(L. 1979 S.B. 328, et al. § 18, A.L. 1984 S.B. 451)

198.058. Certain facilities exempt from construction standards, when – report by department. Any facility licensed under chapter 197, RSMo, or chapter 198, which is in operation before September 28, 1979, or whose application is on file, or whose construction plans have been approved by the department before September 28, 1979, shall be exempt from construction standards developed by the department subsequent to the date such facility became first licensed and including those construction standards developed after September 28, 1979, for buildings or other physical units which were in existence or under construction on September 28, 1979. Such facilities shall be licensed in accordance with all other standards and regulations promulgated under sections 198.003 to 198.096. The department shall survey all such facilities and shall prepare a report for submission to the general assembly on actions and standards necessary to bring such facilities into full compliance. The report shall be filed with the speaker of the house and the president pro tem of the senate by January 1, 1982.

(L. 1979 S.B. 328, et al. § 19)

198.061. Penalty for providing services without license – penalty for interfering with enforcement of law. 1. No person shall, jointly or severally, offer, advertise or hold out to the public, services subject to section 198.015 without a currently valid appropriate license issued by the department to render the particular services.

2. No person, jointly or severally, shall interfere with or prevent any duly authorized representative of the department or the attorney general from lawful enforcement of sections 198.003 to 198.186, 198.200, 202.905, 208.030, or 208.159, RSMo.

3. Any person violating any provision of this section shall be guilty of a class C misdemeanor.

(L. 1979 S.B. 328, et al. § 20)

198.064. Duplicate payments – how determined – procedures for repayment. 1. No operator shall retain any duplicate payment for the care of a resident received from any state agency or agencies. For the purposes of this section a duplicate payment is one which results in a total payment to the operator in excess of the per diem or monthly rate authorized by the agency or agencies. The operator shall report all such duplicate payments to the paying agency or agencies within five business days after such duplicate payment is discovered or reasonably should have been discovered.

2. The operator shall repay the excess amount in accordance with such procedures as the paying agency or agencies shall reasonably require, together with interest at the rate of one and five tenths percent per month from the date the duplicate payment was discovered or reasonably should have been discovered.

(L. 1979 S.B. 328, et al. § 21)

198.066. Sanctions for violations authorized. To encourage compliance with the provisions of this chapter and any rules promulgated thereto, the department of health and senior services shall impose sanctions commensurate with the seriousness of the violation which occurred. For class I, II, or III violations, the following remedies may be imposed:

- (1) A plan of correction;
- (2) Additional directed staff training;
- (3) State monitoring;
- (4) A directed plan of correction;
- (5) Denial of payment for new Medicaid admissions;
- (6) A probationary license and consent agreement as described in section 198.026;
- (7) Recovery of civil monetary penalties pursuant to section 198.067;
- (8) Denial of payment for all new admissions;
- (9) Receivership pursuant to section 198.105; or
- (10) License revocation.

(L. 2003 S.B. 556 & 311)

198.067. Noncompliance with law – injunction, when – civil penalties, how calculated, where deposited. 1. An action may be brought by the department, or by the attorney general on his or her own volition or at the request of the department or any other appropriate state agency, to temporarily

or permanently enjoin or restrain any violation of sections 198.003 to 198.096, to enjoin the acceptance of new residents until substantial compliance with sections 198.003 to 198.096 is achieved, or to enjoin any specific action or practice of the facility. Any action brought pursuant to the provisions of this section shall be placed at the head of the docket by the court, and the court shall hold a hearing on any action brought pursuant to the provisions of this section no less than fifteen days after the filing of the action.

2. The department may bring an action in circuit court to recover a civil penalty against the licensed operator of the facility as provided by this section. Such action shall be brought in the circuit court for the county in which the facility is located. The circuit court shall determine the amount of penalty to be assessed within the limits set out in this section. Appeals may be taken from the judgment of the circuit court as in other civil cases.

3. The operator of any facility which has been cited with a violation of sections 198.003 to 198.096 or the regulations established pursuant thereto, or of subsection (b), (c), or (d) of Section 1396r of Title 42 of the United States Code or the regulations established pursuant thereto, is liable to the state for civil penalties of up to twenty-five thousand dollars for each day that the violations existed or continue to exist. Violations shall be presumed to continue to exist from the time they are found until the time the department of health and senior services finds them to have been corrected. When applicable, the amount of the penalty shall be determined as follows:

(1) For each violation of a class I standard when applicable pursuant to subdivision (6) of this subsection, not less than one thousand dollars nor more than ten thousand dollars;

(2) For each violation of a class II standard, not less than two hundred fifty dollars nor more than one thousand dollars;

(3) For each violation of a class III standard, not less than fifty dollars nor more than two hundred fifty dollars;

(4) For each violation of a federal standard which does not also constitute a violation of a state law or regulation, not less than two hundred fifty dollars nor more than five hundred dollars;

(5) For each specific class I violation by the same operator at a particular facility which has been previously cited within the past twenty-four months and for each specific class II or III violation by the same operator at a particular facility which has been

previously cited within the past twelve months, double the amount last imposed;

(6) In accordance with the provisions of this section, if the department imposes a civil monetary penalty for a class I violation, the liability for such penalty shall be incurred immediately upon the imposition of the penalty for the violation regardless of any subsequent correction of the violation by the facility. For class II or III violations, if the department imposes a civil monetary penalty, the liability for such penalty shall be incurred if a breach of a specific state or federal standard or statute remains uncorrected and not in accord with the accepted plan of correction at the time of the reinspection conducted pursuant to subsection 3 of section 198.026 or the regulations established pursuant to Title 42 of the United States Code.

A judgment rendered against the operator of a facility pursuant to this subsection shall bear interest as provided in subsection 1 of section 408.040, RSMo.

4. Any individual who willfully and knowingly certifies pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42 of the United States Code a material and false statement in a resident assessment is subject to a civil penalty of not more than one thousand dollars with respect to each assessment.

Any individual who willfully and knowingly causes another individual to certify pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42 of the United States Code a material and false statement in a resident assessment is subject to a civil penalty of not more than five thousand dollars with respect to each assessment.

5. The imposition of any remedy provided for in sections 198.003 to 198.186 shall not bar the imposition of any other remedy.

6. Twenty-five percent of the penalties collected pursuant to this section shall be deposited in the elderly home delivered meals trust fund as established in section 143.1002, RSMo. Twenty-five percent of the penalties collected pursuant to this section shall be deposited in the nursing facility quality of care fund established in section 198.418 to be used for the sole purpose of supporting quality care improvement projects within the office of state ombudsman for long-term care facility residents, established pursuant to section 660.603, RSMo. The remaining fifty percent of the penalties collected pursuant to this section shall be deposited into the nursing facility quality of care fund to be used by the department for the sole purpose of developing a program to assist qualified nursing facilities to improve the quality of service to their residents. The

director of the department shall, by rule, develop a definition of qualified facilities and shall establish procedures for the selection of qualified facilities. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void. Such penalties shall not be considered a charitable contribution for tax purposes.

7. To recover any civil penalty, the moving party shall prove by clear and convincing evidence that the violation occurred.

8. The licensed operator of a facility against whom an action to recover a civil penalty is brought pursuant to this section may confess judgment as provided in section 511.070, RSMo, at any time prior to hearing. If such licensed operator agrees to confess judgment, the amount of the civil penalty recommended by the moving party in its petition shall be reduced by twenty-five percent and the confessed judgment shall be entered by the circuit court at the reduced amount.

9. The amount of any civil penalty assessed by the circuit court pursuant to this section shall be reduced by the amount of any civil monetary penalty which the licensed operator of the facility may establish it has paid pursuant to the laws of the United States for the breach of the same federal standards for which the state action is brought.

10. In addition to the civil penalties specified in subdivision (1) of subsection 3 of this section, any facility which is cited with a violation of a class I standard pursuant to subsection 1 of section 198.085, when such violation results in serious physical injury or abuse of a sexual nature pursuant to subdivision (1) of section 198.006, to any resident of that facility shall be liable to the state for a civil penalty of one hundred dollars multiplied by the number of beds licensed to the facility, up to a maximum of ten thousand dollars pursuant to subsections 1 and 2 of this section. The liability of the facility for civil penalties pursuant to this section shall be incurred immediately upon the citation of the violation and shall not be affected by any subsequent correction of the violation. For the purposes of this section,

"serious physical injury" means physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

11. The department shall not impose a fine for self-reporting class II and class III violations so long as each violation is corrected within a specified period of time as determined by the department and there is no reoccurrence of the particular violation for twelve months following the date of the first self-reporting.

12. If a facility is sold or changes its operator, any civil penalty assessed shall not be sold, transferred, or otherwise assigned to the successor operator but shall remain the sole liability of the operator at the time of the violation.

(L. 1979 S.B. 328, et al. § 22, A.L. 1989 S.B. 203, A.L. 1996 H.B. 781, A.L. 1999 H.B. 316, et al. merged with S.B. 326, A.L. 2003 S.B. 445 & 311)

198.070. Abuse or neglect of residents – reports, when, by whom – contents of report – failure to report, penalty – investigation, referral of complaint, removal of resident – confidentiality of report – immunity, exception – prohibition against retaliation – penalty – employee list – self-reporting of incidents, investigations, when. 1. When any adult day care worker; chiropractor; Christian Science practitioner; coroner; dentist; embalmer; employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; social worker; or other person with the care of a person sixty years of age or older or an eligible adult has reasonable cause to believe that a resident of a facility has been abused or neglected, he or she shall immediately report or cause a report to be made to the department.

2. The report shall contain the name and address of the facility, the name of the resident, information regarding the nature of the abuse or neglect, the name

of the complainant, and any other information which might be helpful in an investigation.

3. Any person required in subsection 1 of this section to report or cause a report to be made to the department who knowingly fails to make a report within a reasonable time after the act of abuse or neglect as required in this subsection is guilty of a class A misdemeanor.

4. In addition to the penalties imposed by this section, any administrator who knowingly conceals any act of abuse or neglect resulting in death or serious physical injury, as defined in section 565.002, RSMo, is guilty of a class D felony.

5. In addition to those persons required to report pursuant to subsection 1 of this section, any other person having reasonable cause to believe that a resident has been abused or neglected may report such information to the department.

6. Upon receipt of a report, the department shall initiate an investigation within twenty-four hours and, as soon as possible during the course of the investigation, shall notify the resident's next of kin or responsible party of the report and the investigation and further notify them whether the report was substantiated or unsubstantiated unless such person is the alleged perpetrator of the abuse or neglect. As provided in section 565.186, RSMo, substantiated reports of elder abuse shall be promptly reported by the department to the appropriate law enforcement agency and prosecutor.

7. If the investigation indicates possible abuse or neglect of a resident, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the resident from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the resident in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the resident, for a period not to exceed thirty days.

8. Reports shall be confidential, as provided pursuant to section 660.320, RSMo.

9. Anyone, except any person who has abused or neglected a resident in a facility, who makes a report pursuant to this section or who testifies in any

administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith or with malicious purpose. It is a crime pursuant to section 565.186 and 565.188, RSMo, for any person to purposely file a false report of elder abuse or neglect.

10. Within five working days after a report required to be made pursuant to this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

11. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because such resident or employee or any member of such resident's or employee's family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which the resident, the resident's family or an employee has reasonable cause to believe has been committed or has occurred. Through the existing department information and referral telephone contact line, residents, their families and employees of a facility shall be able to obtain information about their rights, protections and options in cases of eviction, harassment, dismissal or retaliation due to a report being made pursuant to this section.

12. Any person who abuses or neglects a resident of a facility is subject to criminal prosecution under section 565.180, 565.182, or 565.184, RSMo.

13. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who are or have been employed in any facility and who have been finally determined by the department pursuant to section 660.315, RSMo, to have knowingly or recklessly abused or neglected a resident. For purposes of this section only, "knowingly" and "recklessly" shall have the meanings that are ascribed to them in this section. A person acts "knowingly" with respect to the person's conduct when a reasonable person should be aware of the result caused by his or her conduct. A person acts "recklessly" when the person consciously disregards a substantial and unjustifiable risk that the person's conduct will result in serious physical injury and such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

14. The timely self reporting of incidents to the central registry by a facility shall continue to be investigated in accordance with department policy, and shall not be counted or reported by the department as a hotline call but rather a self reported incident. If the self reported incident results in a regulatory violation, such incident shall be reported as a substantiated report.

(L. 1979 S.B. 328, et al. § 23, A.L. 1984 S.B. 451, A.L. 1987 S.B. 277, A.L. 1988 S.B. 602, A.L. 1990 H.B. 1370, et al., A.L. 1992 S.B. 573 & 634, A.L. 1994 H.B. 1335 & 1381, A.L. 1999 H.B. 316, et al. merged with S.B. 326, A.L. 2003 S.B. 556 & 311)

198.071. Death of a resident, persons to contact prior to transfer of deceased. The staff of a residential care facility I, a residential care facility II, an intermediate care facility, or a skilled nursing facility shall attempt to contact the resident's immediate family or a resident's responsible party, and shall contact the attending physician and notify the local coroner or medical examiner immediately upon the death of any resident of the facility prior to transferring the deceased resident to a funeral home.

(L. 2003 S.B. 556 & 311)

198.073. Persons eligible for care in residential care facility I or residential care facility II – facility requirements for care of Alzheimer's patients. 1. Except as provided in subsection 3 of this section, a residential care facility II or residential care facility I shall admit or retain only those persons who are capable mentally and physically of negotiating a normal path to safety using assistive devices or aids when necessary, and who may need assisted personal care within the limitations of such facilities, and who do not require hospitalization or skilled nursing care.

2. Notwithstanding the provisions of subsection 3 of this section, those persons previously qualified for residence who may have a temporary period of incapacity due to illness, surgery, or injury, which period does not exceed forty-five days, may be allowed to remain in a residential care facility II or residential care facility I if approved by a physician.

3. A residential care facility II may admit or continue to care for those persons who are physically capable of negotiating a normal path to safety using assistive devices or aids when necessary but are mentally incapable of negotiating such a path to safety that have been diagnosed with Alzheimer's disease or Alzheimer's related dementia, if the following requirements are met:

(1) A family member or legal representative of the resident, in consultation with the resident's

primary physician and the facility, determines that the facility can meet the needs of the resident. The facility shall document the decision regarding continued placement in the facility through written verification by the family member, physician and the facility representative;

(2) The facility is equipped with an automatic sprinkler system, in compliance with National Fire Protection Association Code 13 or National Fire Protection Association Code 13R, and an automated fire door system and smoke alarms in compliance with 13.3.4 of the 1997 Life Safety Codes for Existing Health Care Occupancy;

(3) In a multilevel facility, residents who are mentally incapable of negotiating a pathway to safety are housed only on the ground floor;

(4) The facility shall take necessary measures to provide residents with the opportunity to explore the facility and, if appropriate, its grounds;

(5) The facility shall be staffed twenty-four hours a day by the appropriate number and type of personnel necessary for the proper care of residents and upkeep of the facility. In meeting such staffing requirements, every resident who is mentally incapable of negotiating a pathway to safety shall count as three residents. All on duty staff of the facility shall, at all times, be awake, dressed and prepared to assist residents in case of emergency;

(6) Every resident mentally incapable of negotiating a pathway to safety in the facility shall be assessed by a licensed professional, as defined in sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337, RSMo, with an assessment instrument utilized by the division of aging known as the minimum data set used for assessing residents of skilled nursing facilities:

(a) Upon admission;

(b) At least semiannually; and

(c) When a significant change has occurred in the resident's condition which may require additional services;

(7) Based on the assessment in subdivision (6) of this subsection, a licensed professional, as defined in sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337, RSMo, shall develop an individualized service plan for every resident who is mentally incapable of negotiating a pathway to safety. Such individualized service plan shall be implemented by the facility's staff to meet the specific needs of the resident;

(8) Every facility shall use a personal electronic monitoring device for any resident whose physician recommends the use of such device;

(9) All facility personnel who will provide direct care to residents who are mentally incapable of negotiating a pathway to safety shall receive at least twenty-four hours of training within the first thirty days of employment. At least twelve hours of such training shall be classroom instruction, with six classroom instruction hours and two on the job training hours related to the special needs, care and safety of residents with dementia;

(10) All personnel of the facility, regardless of whether such personnel provides direct care to residents who cannot negotiate a pathway to safety, shall receive on a quarterly basis at least four hours of in-service training, with at least two such hours relating to the care and safety of residents who are mentally incapable of negotiating a pathway to safety;

(11) Every facility shall make available and implement self-care, productive and leisure activity programs for persons with dementia which maximize and encourage the resident's optimal functional ability;

(12) Every facility shall develop and implement a plan to protect the rights, privacy and safety of all residents and to prevent the financial exploitation of all residents; and

(13) A licensee of any licensed residential care facility or any residential care facility shall ensure that its facility does not accept or retain a resident who is mentally incapable of negotiating a normal pathway to safety using assistive devices and aids that:

(a) Has exhibited behaviors which indicate such resident is a danger to self or others;

(b) Is at constant risk of elopement;

(c) Requires physical restraint;

(d) Requires chemical restraint. As used in this subdivision, the following terms mean:

a. "Chemical restraint", a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms;

b. "Convenience", any action taken by the facility to control resident behavior or maintain residents with a lesser amount of effort by the facility and not in the resident's best interests;

(c) "Discipline", any action taken by the facility for the purpose of punishing or penalizing residents;

(e) Requires skilled nursing services as defined in subdivision (17) of section 198.003 for which the facility is not licensed or able to provide;

(f) Requires more than one person to simultaneously physically assist the resident with any activity of daily living, with the exception of bathing;

(g) Is bed bound or chair bound due to a debilitating or chronic condition.

4. The facility shall not care for any person unless such facility is able to provide appropriate services for and meet the needs of such person.

5. Nothing in this chapter shall prevent a facility from discharging a resident who is a danger to himself or herself, or to others.

6. The training requirements established in subdivisions (9) and (10) of subsection 3 of this section shall fully satisfy the training requirements for the program described in subdivision (18) of subsection 1 of section 208.152, RSMo.

7. The division of aging shall promulgate rules to ensure compliance with this section and to sanction facilities that fail to comply with this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

(L. 1979 S.B. 328, et al. § 24, A.L. 1984 S.B. 451, A.L. 1992 H.B. 899 and S.B. 573 & 634 and S.B. 721, A.L. 1999 S.B. 326)

198.076. Department of social services to establish standards and regulations for residential care facilities I and residential care facilities II. The department shall promulgate reasonable standards and regulations for all residential care facilities I and all residential care facilities II. The standards and regulations shall take into account the level of care provided and the number and type of

residents served by the facility to insure maximum flexibility. These standards and regulations shall relate to:

- (1) The number and qualifications of employed and contract personnel having responsibility for any of the services provided for residents;
- (2) The equipment, facilities, services and supplies essential to the health and welfare of the residents;
- (3) Fire safety and sanitation in the facility;
- (4) Diet, which shall be based on good nutritional practice;
- (5) Personal funds and property of residents;
- (6) Resident rights and resident grievance procedures appropriate to the levels of care, size and type of facility;
- (7) Record keeping appropriate to the levels of care, size and type of facility;
- (8) Construction of the facility;
- (9) Care of residents.

(L. 1979 S.B. 328, et al. § 25, A.L. 1984 S.B. 451)

198.077. Department to maintain facility compliance records. For any residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility, if the department of social services maintains records of site inspections and violations of statutes, rules, or the terms or conditions of any license issued to such facility, the department shall also maintain records of compliance with such statutes, rules, or terms or conditions of any license, and shall specifically record in such records any actions taken by the facility that are above and beyond what is minimally required for compliance.

(L. 1999 H.B. 316, et al. § 4 and S.B. 326 15)

198.079. Department of social services to establish standards and regulations for intermediate care and skilled nursing facilities. The department shall promulgate reasonable standards and regulations for all intermediate care facilities and all skilled nursing facilities. The standards and regulations shall take into account the level of care provided and the type of residents served by the facility. These standards and regulations shall relate to:

- (1) The number and qualifications of employed and contract personnel having responsibility for any of the services provided for residents;

(2) The equipment, facilities, services and supplies essential to the health and welfare of the residents;

(3) Fire safety and sanitation in the facility;

(4) Diet, which shall be related to the needs of each resident and based on good nutritional practice and on recommendations which may be made by the physician attending the resident;

(5) Personal funds and property of residents;

(6) Resident rights and resident grievance procedures;

(7) Record keeping, including clinical and personnel records;

(8) The construction of the facility, including plumbing, heating, ventilation and other housing conditions which shall insure the health, safety and comfort of residents and protection from fire hazards;

(9) Care of residents;

(10) Social and rehabilitative service;

(11) Staff training and continuing education.

(L. 1979 S.B. 328, et al. § 26)

198.080. Assessment procedures developed – rulemaking authority. The division of aging shall develop flexible assessment procedures for individuals in long-term care and those considering long term care services which follow the individual through the continuum of care, including periodic reassessment. By January 1, 2002, the division of aging shall promulgate rules and regulations to implement the new assessment system and shall make a report to the appropriate house and senate committees of the general assembly regarding the new assessment system. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

(L. 1999 S.B. 326 § 3)

198.082. Nursing assistant training programs – training incomplete, special requirements and supervision for assistant beginning duties. 1.

Each nursing assistant hired to work in a skilled nursing or intermediate care facility after January 1, 1980, shall have successfully completed a nursing assistant training program approved by the department or shall enroll in and begin the first available approved training program which is scheduled to commence within ninety days of the date of the nursing assistant's employment and which shall be completed within four months of employment. Training programs shall be offered at any facility licensed or approved by the department of health and senior services which is most reasonably accessible to the enrollees in each class. The program may be established by the skilled nursing or intermediate care facility, by a professional organization, or by the department, and training shall be given by the personnel of the facility, by a professional organization, by the department, by any junior college or by the vocational education department of any high school.

2. As used in this section the term "nursing assistant" means an employee, including a nurse's aide or an orderly, who is assigned by a skilled nursing or intermediate care facility to provide or assist in the provision of direct resident health care services under the supervision of a nurse licensed under the nursing practice law, chapter 335, RSMo. This section shall not apply to any person otherwise licensed to perform health care services under the laws of this state. It shall not apply to volunteers or to members of religious or fraternal orders which operate and administer the facility, if such volunteers or members work without compensation.

3. The training program after January 1, 1989, shall consist of at least the following:

(1) A training program consisting of at least seventy-five classroom hours of training on basic nursing skills, clinical practice, resident safety and rights, the social and psychological problems of residents, and the methods of handling and caring for mentally confused residents such as those with Alzheimer's disease and related disorders, and one hundred hours supervised and on the job training. The one hundred hours shall be completed within four months of employment and may consist of normal employment as nurse assistants under the supervision of a licensed nurse; and

(2) Continuing in-service training to assure continuing competency in existing and new nursing skills. All nursing assistants trained prior to January 1, 1989, shall attend, by August 31, 1989, an entire

special retraining program established by rule or regulation of the department which shall contain information on methods of handling mentally confused residents and which may be offered on premises by the employing facility.

4. Nursing assistants who have not successfully completed the nursing assistant training program prior to employment may begin duties as a nursing assistant only after completing an initial twelve hours of basic orientation approved by the department and may provide direct resident care only if under the general supervision of a licensed nurse prior to completion of the seventy-five classroom hours of the training program.

(L. 1979 S.B. 328, et al. § 27, A.L. 1988 S.B. 602, A.L. 2003 S.B. 556 & 311)

198.085. Categories of standards for each type of licensed facility. In establishing standards for each type of facility, the department shall classify the standards into three categories for each type of licensed facility as follows:

(1) Class I standards are standards the violation of which would present either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result;

(2) Class II standards are standards which have a direct or immediate relationship to the health, safety or welfare of any resident, but which do not create imminent danger;

(3) Class III standards are standards which have an indirect or a potential impact on the health, safety or welfare of any resident.

(L. 1979 S.B. 328, et al. § 28, A.L. 1984 S.B. 451, A.L. 1995 H.B. 574)

198.086. Demonstration project, Alzheimer's licensure category – department duties – accommodations for family members. 1.

The department of health and senior services shall develop and implement a demonstration project designed to establish a licensure category for health care facilities that wish to provide treatment to persons with Alzheimer's disease or Alzheimer's related dementia. The division shall also:

(1) Inform potential providers of the demonstration project and seek letters of intent;

(2) Review letters of intent and select provider organizations to participate in the demonstration project. Ten such organizations may develop such projects using an existing license and additional

organizations shall be newly licensed facilities with no more than thirty beds per project. One demonstration project shall be at a stand-alone facility of no more than one hundred twenty beds designed and operated exclusively for the care of residents with Alzheimer's disease or dementia within a county of the first classification with a charter form of government with a population over nine hundred thousand. A total of not more than three hundred beds may be newly licensed through the demonstration projects. All projects shall maintain their pilot status until a complete evaluation is completed by the division of aging, in conjunction with a qualified Missouri school or university, and a written determination is made from such evaluation that the pilot project is successful;

(3) Monitor the participants' compliance with the criteria established in this section;

(4) Recommend legislation regarding the licensure of dementia specific residential care based on the results of the demonstration project; and

(5) Submit a report regarding the division's activities and recommendations for administrative or legislative action on or before November fifteenth of each year to the governor, the president pro tem of the senate and the speaker of the house of representatives.

2. The director of the division of aging shall:

(1) Develop a reimbursement methodology to reasonably and adequately compensate the pilot projects for the costs of operation of the project, and require the filing of annual cost reports by each participating facility which shall include, but not be limited to, the cost equivalent of unpaid volunteer or donated labor;

(2) Process the license applications of project participants;

(3) Monitor each participant to assure its compliance with the requirements and that the life, health and safety of residents are assured;

(4) Require each participating facility to complete a minimum data set form for each resident occupying a pilot bed;

(5) Require the division of aging to assign a single team of the same surveyors to inspect and survey all participating facilities at least twice a year for the entire period of the project; and

(6) Submit to the president pro tem of the senate and speaker of the house of representatives

copies of any statements of deficiencies, plans of correction and complaint investigation reports applying to project participants.

3. Project participants shall:

(1) Be licensed by the division of aging;

(2) Provide care only to persons who have been diagnosed with Alzheimer's disease or Alzheimer's related dementia;

(3) Have buildings and furnishings that are designed to provide for the resident's safety. Facilities shall have indoor and outdoor activity areas, and electronically controlled exits from the buildings and grounds to allow residents the ability to explore while preventing them from exiting the facility's grounds unattended;

(4) Be staffed twenty-four hours a day by the appropriate number and type of personnel necessary for the proper care of residents and upkeep of the facility;

(5) Conduct special staff training relating to the needs, care and safety of persons with Alzheimer's disease or Alzheimer's related dementia within the first thirty days of employment;

(6) Utilize personal electronic monitoring devices for any resident whose physician recommends use of such device;

(7) Permit the resident's physician, in consultation with the family members or health care advocates of the resident, to determine whether the facility meets the needs of the resident;

(8) Be equipped with an automatic sprinkler system, in compliance with the National Fire Protection Association Code 13 or National Fire Protection Association Code 13R, and an automated fire alarm system and smoke barriers in compliance with the 1997 Life Safety Codes for Existing Health Care Occupancy; and

(9) Implement a social model for the residential environment rather than an institutional medical model.

4. For purposes of this section, "health care facilities for persons with Alzheimer's disease or Alzheimer's related dementia" means facilities that are specifically designed and operated to provide elderly individuals who have chronic confusion or dementia illness, or both, with a safe, structured but flexible environment that encourages physical activity through a well developed recreational and aging in place and activity program. Such program

shall continually strive to promote the highest practicable physical and mental abilities and functioning of each resident.

5. Nothing in this section shall be construed to prohibit project participants from accommodating a family member or other caregiver from residing with the resident in accordance with all life, health, and safety standards of the facility.

(L. 1999 S.B. 326 § 5, A.L. 2003 S.B. 556 & 311)

CROSS REFERENCE:

Rulemaking authority, RSMo 198.534

198.087. Uniformity of application of regulation standards, department's duties. To ensure uniformity of application of regulation standards in long-term care facilities throughout the state, the department of social services shall:

(1) Evaluate the requirements for inspectors or surveyors of facilities, including the eligibility, training and testing requirements for the position. Based on the evaluation, the department shall develop and implement additional training and knowledge standards for inspectors and surveyors;

(2) Periodically evaluate the performance of the inspectors or surveyors regionally and statewide to identify any deviations or inconsistencies in regulation application. At a minimum, the Missouri on-site surveyor evaluation process, and the number and type of actions overturned by the informal dispute resolution process and formal appeal shall be used in the evaluation. Based on such evaluation, the department shall develop standards and a retraining process for the region, state, or individual inspector or surveyor, as needed;

(3) In addition to the provisions of subdivisions (1) and (2) of this section, the department shall develop a single uniform comprehensive and mandatory course of instruction for inspectors/surveyors on the practical application of enforcement of statutes, rules and regulations. Such course shall also be open to attendance by administrators and staff of facilities licensed pursuant to this chapter;

(4) With the full cooperation of and in conjunction with the department of health and senior services, evaluate the implementation and compliance of the provisions of subdivision (3) of subsection 1 of section 198.012 in which rules, requirements, regulations and standards pursuant to section 197.080, RSMo, for residential care facilities II, intermediate care facilities and skilled nursing facilities attached to an acute care hospital are

consistent with the intent of this chapter. A report of the differences found in the evaluation conducted pursuant to this subdivision shall be made jointly by the departments of social services and health to the governor and members of the general assembly by January 1, 2000; and

(5) With the full cooperation and in conjunction with the department of health and senior services, develop rules and regulations requiring the exchange of information, including regulatory violations, between the departments to ensure the protection of individuals who are served by health care providers regulated by either the department of health and senior services or the department of social services.

(L. 1999 S.B. 326 § 11)

198.088. Facilities to establish policies and procedures, scope, content – rights of residents – complaint – procedure. 1. Every facility, in accordance with the rules applying to each particular type of facility, shall ensure that:

(1) There are written policies and procedures available to staff, residents, their families or legal representative and the public which govern all areas of service provided by the facility. The facility shall also retain and make available for public inspection at the facility to staff, residents, their families or legal representative and the public a complete copy of each official notification from the department of violations, deficiencies, licensure approvals, disapprovals, and responses, a description of services, basic rate and charges for any services not covered by the basic rate, if any, and a list of names, addresses and occupation of all individuals who have a proprietary interest in the facility;

(2) Policies relating to admission, transfer, and discharge of residents shall assure that:

(a) Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts;

(b) As changes occur in their physical or mental condition, necessitating service or care which cannot be adequately provided by the facility, residents are transferred promptly to hospitals, skilled nursing facilities, or other appropriate facilities; and

(c) Except in the case of an emergency, the resident, his next of kin, attending physician, and the responsible agency, if any, are consulted at least thirty days in advance of the transfer or discharge of

any resident, and casework services or other means are utilized to assure that adequate arrangements exist for meeting his needs through other resources;

(3) Policies define the uses of chemical and physical restraints, identify the professional personnel who may authorize the application of restraints in emergencies and describe the mechanism for monitoring and controlling their use;

(4) Policies define procedures for submittal of complaints and recommendations by residents and for assuring response and disposition;

(5) There are written policies governing access to, duplication of, and dissemination of information from the resident's records;

(6) Each resident admitted to the facility:

(a) Is fully informed of his rights and responsibilities as a resident. Prior to or at the time of admission, a list of resident rights shall be provided to each resident, or his designee, next of kin, or legal guardian. A list of resident rights shall be posted in a conspicuous location in the facility and copies shall be available to anyone upon request;

(b) Is fully informed in writing, prior to or at the time of admission and during stay, of services available in the facility, and of related charges including any charges for services not covered under the federal or state programs or not covered by the facility's basic per diem rate;

(c) Is fully informed by a physician of his health and medical condition unless medically contraindicated, as documented by a physician in his resident record, and is afforded the opportunity to participate in the planning of his total care and medical treatment and to refuse treatment, and participates in experimental research only upon his informed written consent;

(d) Is transferred or discharged only for medical reasons or for his welfare or that of other residents, or for nonpayment for his stay. No resident may be discharged without notice of his right to a hearing and an opportunity to be heard on the issue of whether his immediate discharge is necessary. Such notice shall be given in writing no less than thirty days in advance of the discharge except in the case of an emergency discharge. In emergency discharges a written notice of discharge and right to a hearing shall be given as soon as practicable and an expedited hearing shall be held upon request of the resident, next of kin, legal guardian, or nursing facility;

(e) Is encouraged and assisted, throughout his period of stay, to exercise his rights as a resident and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff or to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) May manage his personal financial affairs, and, to the extent that the facility assists in such management, has his personal financial affairs managed in accordance with section 198.090;

(g) Is free from mental and physical abuse, and free from chemical and physical restraints except as follows:

a. When used as a part of a total program of care to assist the resident to attain or maintain the highest practicable level of physical, mental or psychosocial well-being;

b. When authorized in writing by a physician for a specified period of time; and

c. When necessary in an emergency to protect the resident from injury to himself or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician. When restraints are indicated, devices that are least restrictive, consistent with the resident's total treatment program, shall be used;

(h) Is ensured confidential treatment of all information contained in his records, including information contained in an automatic data bank, and his written consent shall be required for the release of information to persons not otherwise authorized under law to receive it;

(i) Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;

(j) Is not required to perform services for the facility;

(k) May communicate, associate and meet privately with persons of his choice, unless to do so would infringe upon the rights of other residents, and send and receive his personal mail unopened;

(l) May participate in activities of social, religious and community groups at his discretion, unless contraindicated for reasons documented by a physician in the resident's medical record;

(m) May retain and use his personal clothing and possessions as space permits;

(n) If married, is ensured privacy for visits by his or her spouse; if both are residents in the facility, they are permitted to share a room; and

(o) Is allowed the option of purchasing or renting goods or services not included in the per diem or monthly rate from a supplier of his own choice;

(7) The resident or his designee, next of kin or legal guardian receives an itemized bill for all goods and services actually rendered;

(8) A written account, available to residents and their families, is maintained on a current basis for each resident with written receipts for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or on behalf of the resident.

2. Each facility and the department shall encourage and assist residents in the free exercise of the resident's rights to civil and religious liberties, including knowledge of available choices and the right to independent personal decision. Each resident shall be given a copy of a statement of his rights and responsibilities, including a copy of the facility's rules and regulations. Each facility shall prepare a written plan to ensure the respect of each resident's rights and privacy and shall provide appropriate staff training to implement the plan.

3. (1) Each facility shall establish written procedures approved by the department by which complaints and grievances of residents may be heard and considered. The procedures shall provide for referral to the department of any complaints or grievances not resolved by the facility's grievance procedure.

(2) Each facility shall designate one staff member, employed full time, referred to in this subsection as the "designee", to receive all grievances when they are first made.

(3) If anyone wishes to complain about treatment, conditions, or violations of rights, he shall write or cause to be written his grievance or shall state it orally to the designee no later than fourteen days after the occurrence giving rise to the grievance. When the department receives a complaint that does not contain allegations of abuse or neglect or allegations which would, if substantiated, constitute violation of a class I or class II standard as defined in section 198.085, and the complainant indicates that the complaint was not filed with the facility prior to the reporting of it to the department, the department may in such instances refer the complaint to the staff person who is designated by the facility to receive all grievances when they are first made. In such

instances the department shall assure appropriate response from the facility, assure resolution at a subsequent on-site visit and provide a report to the complainant. The designee shall confer with persons involved in the occurrence and with any other witnesses and, no later than three days after the grievance, give a written explanation of findings and proposed remedies, if any, to the complainant and to the aggrieved party, if someone other than the complainant. Where appropriate because of the mental or physical condition of the complainant or the aggrieved party, the written explanation shall be accompanied by an oral explanation.

(4) The department shall establish and implement procedures for the making and transmission of complaints to the department by any person alleging violation of the provisions of sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, and the standards established thereunder. The department shall promptly review each complaint. In the case of a refusal to investigate, the department shall promptly notify the complainant of its refusal and the reasons therefor; and in every other case, the department shall, following investigation, notify the complainant of its investigation and any proposed action.

4. Whenever the department finds upon investigation that there have been violations of the provisions of sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, or the standards established thereunder by any person licensed under the provisions of chapter 330, 331, 332, 334, 335, 336, 337, 338, or 344, RSMo, the department shall forward a report of its findings to the appropriate licensing or examining board for further investigation.

5. Each facility shall maintain a complete record of complaints and grievances made against such facility and a record of the final disposition of the complaints and grievances. Such record shall be open to inspection by representatives of the department during normal business hours.

6. Nothing in this section shall be construed as requiring a resident to exhaust grievance procedures established by the facility or by the department prior to filing a complaint pursuant to section 198.090.

(L. 1979 S.B. 328, et al. § 29, A.L. 1988 S.B. 602, A.L. 1989 S.B. 203 & 270, A.L. 1994 H.B. 1335 & 1381)

198.090. Personal possessions may be held in trust, requirements, disposal of – written statements required when, penalty – prohibitions, penalties – misappropriation, report, investigation – employee disqualification list. 1. An operator may make available to any resident the service of holding in trust personal possessions and funds of the resident and shall, as authorized by the resident, expend the funds to meet the resident's personal needs. In providing this service the operator shall:

(1) At the time of admission, provide each resident or his next of kin or legal guardian with a written statement explaining the resident's rights regarding personal funds;

(2) Accept funds and personal possessions from or for a resident for safekeeping and management, only upon written authorization by the resident or by his designee, or guardian in the case of an adjudged incompetent;

(3) Deposit any personal funds received from or on behalf of a resident in an account separate from the facility's funds, except that an amount to be established by rule of the division of aging may be kept in a petty cash fund for the resident's personal needs;

(4) Keep a written account, available to a resident and his designee or guardian, maintained on a current basis for each resident, with written receipts, for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or on behalf of the resident;

(5) Provide each resident or his designee or guardian with a quarterly accounting of all financial transactions made on behalf of the resident;

(6) Within five days of the discharge of a resident, provide the resident, or his designee or guardian, with an up-to-date accounting of the resident's personal funds and return to the resident the balance of his funds and all his personal possessions;

(7) Upon the death of a resident who has been a recipient of aid, assistance, care, services, or who has had moneys expended on his behalf by the department of social services, provide the department a complete account of all the resident's personal funds within sixty days from the date of death. The total amount paid to the decedent or expended upon his behalf by the department shall be a debt due the state and recovered from the available funds upon the department's claim on such funds. The department shall make a claim on the funds within sixty days from the date of the accounting of the funds by the facility. The nursing facility shall pay the claim

made by the department of social services from the resident's personal funds within sixty days. Where the name and address are reasonably ascertainable, the department of social services shall give notice of the debt due the state to the person whom the recipient had designated to receive the quarterly accounting of all financial transactions made under this section, or the resident's guardian or conservator or the person or persons listed in nursing home records as a responsible party or the fiduciary of the resident's estate. If any funds are available after the department's claim, the remaining provisions of this section shall apply to the balance, unless the funds belonged to a person other than the resident, in which case the funds shall be paid to that person;

(8) Upon the death of a resident who has not been a recipient of aid, assistance, care, services, or who has not had moneys expended on his behalf by the department of social services or the department has not made a claim on the funds, provide the fiduciary of resident's estate, at the fiduciary's request, a complete account of all the resident's personal funds and possessions and deliver to the fiduciary all possessions of the resident and the balance of the resident's funds. If, after one year from the date of death, no fiduciary makes claim upon such funds or possessions, the operator shall notify the department that the funds remain unclaimed. Such unclaimed funds or possessions shall be disposed of as follows:

(a) If the unclaimed funds or possessions have a value totaling one hundred and fifty dollars or less, the funds or the proceeds of the sale of the possessions may be deposited in a fund to be used for the benefit of all residents of the facility by providing the residents social or educational activities. The facility shall keep an accounting of the acquisitions and expenditure of these funds; or

(b) If the unclaimed funds or possessions have a value greater than one hundred and fifty dollars, the funds or possessions shall be immediately presumed to be abandoned property under sections 447.500 to 447.585, RSMo, and the procedures provided for in those sections shall apply notwithstanding any other provisions of those sections which require a period greater than two years for a presumption of abandonment;

(9) Upon ceasing to be the operator of a facility, all funds and property held in trust pursuant to this section shall be transferred to the new operator in accordance with sound accounting principles, and a closeout report signed by both the outgoing operator and the successor operator shall be prepared. The closeout report shall include a list of current balances

of all funds held for residents respectively and an inventory of all property held for residents respectively. If the outgoing operator refuses to sign the closeout report, he shall state in writing the specific reasons for his failure to so sign, and the successor operator shall complete the report and attach an affidavit stating that the information contained therein is true to the best of his knowledge and belief. Such report shall be retained with all other records and accounts required to be maintained under this section;

(10) Not be required to invest any funds received from or on behalf of a resident, nor to increase the principal of any such funds.

2. Any owner, operator, manager, employee, or affiliate of an owner or operator who receives any personal property or anything else of value from a resident, shall, if the thing received has a value of ten dollars or more, make a written statement giving the date it was received, from whom it was received, and its estimated value. Statements required to be made pursuant to this subsection shall be retained by the operator and shall be made available for inspection by the department, or by the department of mental health when the resident has been placed by that department, and by the resident, and his designee or legal guardian. Any person who fails to make a statement required by this subsection is guilty of a class C misdemeanor.

3. No owner, operator, manager, employee, or affiliate of an owner or operator shall in one calendar year receive any personal property or anything else of value from the residents of any facility which have a total estimated value in excess of one hundred dollars.

4. Subsections 2 and 3 of this section shall not apply if the property or other thing of value is held in trust in accordance with subsection 1 of this section, is received in payment for services rendered or pursuant to the terms of a lawful contract, or is received from a resident who is related to the recipient within the fourth degree of consanguinity or affinity.

5. Any operator who fails to maintain records or who fails to maintain any resident's personal funds in an account separate from the facility's funds as required by this section shall be guilty of a class C misdemeanor.

6. Any operator, or any affiliate or employee of an operator, who puts to his own use or the use of the facility or otherwise diverts from the resident's use any personal funds of the resident shall be guilty of a class A misdemeanor.

7. Any person having reasonable cause to believe that a misappropriation of a resident's funds or property has occurred may report such information to the department.

8. For each report the division shall attempt to obtain the name and address of the facility, the name of the facility employee, the name of the resident, information regarding the nature of the misappropriation, the name of the complainant, and any other information which might be helpful in an investigation.

9. Upon receipt of a report, the department shall initiate an investigation.

10. If the investigation indicates probable misappropriation of property or funds of a resident, the investigator shall refer the complaint together with his report to the department director or his designee for appropriate action.

11. Reports shall be confidential, as provided under section 660.320, RSMo.

12. Anyone, except any person participating in or benefiting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

13. Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

14. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because he or any member of his family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which he has reasonable cause to believe has been committed or has occurred.

15. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section 660.315, RSMo, to have misappropriated any property or funds of a resident while employed in any facility.

(L. 1979 S.B. 328, et al. § 30, A.L. 1982 H.B. 1086, A.L. 1989 S.B. 203 & 270, A.L. 1992 S.B. 573 & 634, A.L. 1993 H.B. 564)

(2003) Violation of written report provision of subsection 2 of section does not automatically constitute misappropriation of resident's funds under subsection 15 of section. *Wells v. Dunn*, 104 S.W.3d 792 (Mo.App. W.D.).

198.093. Violations of resident's rights – complaints – legal action – damages. 1. Any resident or former resident who is deprived of any right created by sections 198.088 and 198.090, or the estate of a former resident so deprived, may file a written complaint within one hundred eighty days of the alleged deprivation or injury with the office of the attorney general describing the facts surrounding the alleged deprivation. A copy of the complaint shall be sent to the department by the attorney general.

2. The attorney general shall review each complaint and may initiate legal action as provided under sections 198.003 to 198.186.

3. If the attorney general fails to initiate a legal action within sixty days of receipt of the complaint, the complainant may, within two hundred forty days of filing the complaint with the attorney general, bring a civil action in an appropriate court against any owner, operator or the agent of any owner or operator to recover actual damages. The court may, in its discretion, award punitive damages which shall be limited to the larger of five hundred dollars or five times the amount of special damages, unless the deprivation complained of is the result of an intentional act or omission causing physical or emotional injury to the resident, and may award to the prevailing party attorney's fees based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper; except that, an attorney who is paid in whole or part from public funds for his representation in any cause arising under this section shall not be awarded any attorney fees.

4. No owner or operator who pleads and proves as an affirmative defense that he exercised all care reasonably necessary to prevent the deprivation and injury for which liability is asserted shall be liable under this section.

5. Persons bringing suit to recover against a bond for personal funds pursuant to section 198.096 shall not be required to first file a complaint with the attorney general pursuant to subsection 1 of this section, nor shall subsection 1 be construed to limit in any way the right to recover on such bond.

6. Nothing contained in sections 198.003 to 198.186 shall be construed as abrogating, abridging or otherwise limiting the right of any person to bring

appropriate legal actions in any court of competent jurisdiction to insure or enforce any legal right or to seek damages, nor shall any provision of the above named sections be construed as preventing or discouraging any person from filing a complaint with the department or notifying the department of any alleged deficiency or noncompliance on the part of any facility.

(L. 1979 S.B. 328, et al. § 31)

198.096. Bond required for facility holding resident's property in trust – exception, cash deposit held in insured escrow. 1. The operator of any facility who holds in trust personal funds of residents as provided in section 198.090 shall obtain and file with the department a bond in a form approved by the department in an amount equal to one and one-half times the average monthly balance or average total of the monthly balances, rounded to the nearest one thousand dollars, in the residents' personal funds account or accounts kept pursuant to subdivision (3) of subsection 1 of section 198.090 for the preceding calendar year. In the case of a new facility or of an operator not previously holding in trust the personal funds of residents, the department shall determine the amount of bond to be required, taking into consideration the size and type of facility, the number of residents, and the experience of comparable facilities.

2. The required bond shall be conditioned to secure to every resident or former resident, or the estate of a former resident, the return of any moneys held in trust of which the resident has been wrongfully deprived by acts of the operator or any affiliates or employees of the operator. The liability of the surety to any and all persons shall not exceed the stated amount of the bond regardless of the period of time the bond has been in effect.

3. Whenever the director determines that the amount of any bond which is filed pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled, or whenever the amount of any such bond is impaired by any recovery against the bond, the director may require the operator to file an additional bond in such amount as necessary to adequately protect the money of residents being handled.

4. In the event that any such bond includes a provision allowing the surety to cancel after notice, the bond shall provide for a minimum of sixty days' notice to the department.

5. The operator may, in lieu of a bond, place a cash deposit equal to the amount of the bond required

in this section with an insured lending institution pursuant to a noncancelable escrow agreement with the lending institution if the written agreement is submitted to and approved by the department. No escrow agreement shall be approved without verification of cash deposit.

(L. 1979 S.B. 328, et al. § 32, A.L. 1988 S.B. 602)

198.097. Misappropriation of funds of elderly nursing home residents, penalty. Any person who assumes the responsibility of managing the financial affairs of an elderly person who is a resident of a nursing home shall be guilty of a class D felony if such person misappropriates the funds and fails to pay for the nursing home care of the elderly person.

(L. 1987 S.B. 277 § 1)

198.099. Petition for appointment of receiver – when. The attorney general, either on his own initiative or upon the request of the department or of any other state governmental agency having an interest in the matter, a resident or residents or the guardian of a resident of a facility or the owner or operator of a facility may petition for appointment of a receiver for a facility when any of the following conditions exist:

- (1) The operator is operating without a license;
- (2) The department has revoked the license of an operator or refused to grant an application for a license to the operator;
- (3) The department has initiated revocation procedures and has determined that the lives, health, safety, or welfare of the residents cannot be adequately assured pending a full hearing on license revocation;
- (4) The facility is closing or intends to close and adequate arrangements for relocation of residents have not been made at least thirty days prior to closure;
- (5) An emergency exists in the facility;
- (6) The operator is insolvent; or
- (7) An owner of the land or structure is insolvent and such insolvency substantially affects the operation of the facility.

(L. 1979 S.B. 328, et al. § 33)

198.103. Department may appoint monitor. In any situation described in section 198.099, the department may place a person to act as a monitor in

the facility. The monitor shall observe operation of the facility and shall advise it on how to comply with state laws and regulations, and shall submit a written report periodically to the department on the operation of the facility.

(L. 1979 S.B. 328, et al. § 34)

198.105. Petition for appointment of receiver, contents – hearing – appointment of receiver.

1. Any petition for appointment of a receiver shall be verified and shall be accompanied by an affidavit or affidavits setting forth material facts showing there exists one or more of the conditions specified in section 198.099. The petition shall be filed in the circuit court of Cole County or in the county where the facility is located. If the petition is not filed by the attorney general, a copy of the petition shall be served upon the department and upon the attorney general. The court shall hold a hearing on the petition within five days of the filing of the petition and determine the matter within fifteen days of the initial hearing. The petition and notice of the hearing shall be served on the operator or administrator of the facility or, if personal service is impossible, shall be posted in a conspicuous place in the facility not later than three days before the time specified for the hearing, unless a different period is fixed by order of the court.

2. The court shall appoint a person, selected in accordance with the provisions of this subsection and the rules promulgated pursuant to this section, to act as receiver if it finds that any ground exists which would authorize the appointment of a receiver under section 198.099 and that appointment of a receiver will contribute to the continuity of care or the orderly and safe transfer of residents in the facility. The department shall, within six months of August 28, 2003, promulgate rules to establish guidelines for the determination of qualified receivers, procedures for maintaining the list of qualified receivers that requested in writing to act as a receiver, and the selection or removal of such receivers. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of

rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

3. The director of the department shall maintain a list of persons who have submitted a written request in accordance with the provisions of this subsection and the rules promulgated by the department to act as receiver pursuant to section 198.099. When a petition is filed seeking the appointment of a receiver, the director of the department shall select the first name on the list. The director of the department shall inform such person of his or her selection, the name of the facility, and the grounds for seeking receivership of such facility. Such person may elect not to be appointed, in which case the director of the department shall choose the next consecutive name on the list, continuing until a person has agreed to serve as the receiver. The director shall provide the name of the person selected and agreeing to serve as the receiver to the judge of the court wherein the petition for receivership is filed. For each additional petition filed seeking the appointment of a receiver, names shall be chosen from the list in consecutive order beginning with the next name that follows the last name chosen. If none of the persons on the list agree to serve as the receiver, the court shall appoint a person determined by the court to be qualified to act as receiver.

(L. 1979 S.B. 328, et al. § 35, A.L. 1984 S.B. 451, A.L. 2003 S.B. 556 & 311)

198.108. Ex parte appointment of receiver in emergency, when – notice – hearing. If it appears from the petition filed under section 198.105, or from an affidavit or affidavits filed with the petition, or from testimony of witnesses under oath when the court determines that this is necessary, that there is probable cause to believe that an emergency exists in the facility, the court shall immediately issue the requested order for appointment of a receiver, ex parte and without further hearing. Notice of the petition and order shall be served on the operator or administrator of the facility or, if personal service is impossible, shall be posted in a conspicuous place in the facility within twenty-four hours after issuance of the order. If the petition is not filed by the attorney general, a copy of the petition shall be served on the department and upon the attorney general. A hearing on the petition shall be held within three days after notice is served or posted unless the operator consents to a later date. After the hearing, the court may terminate, continue or modify the temporary order.

(L. 1979 S.B. 328, et al. § 36)

198.112. Powers of receiver. A receiver appointed under this section:

(1) May exercise those powers and shall perform those duties set out by the court;

(2) May, in his discretion, either:

(a) Assume the role of administrator or manager and take control of all day-to-day operations; or

(b) Name an administrator or manager to conduct the day-to-day operations of the facility subject to the supervision and direction of the receiver;

(3) May upgrade deficient homes by any methods, procedures, or actions he deems necessary; provided, however, that expenditures in excess of three thousand dollars, or in excess of any amount set by the court, be first approved by the court;

(4) Shall have the same rights to possession of the building in which the facility is located and of all goods and fixtures in the building at the time the petition for receivership is filed as the operator would have had if the receiver had not been appointed. The receiver shall take such action as is reasonably necessary to protect and conserve the assets or property of which the receiver takes possession, or the proceeds of any transfer thereof, and may use them only in the performance of the powers and duties set forth in this section and by order of the court;

(5) May use the building, fixtures, furnishings and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed. The receiver shall collect payments for all goods and services provided to residents or others during the period of receivership, at the same rate of payment as was charged by the operators at the time the petition for receivership was filed, unless a different rate is set by the court;

(6) May let contracts and hire agents and employees, including legal counsel, to carry out the powers and duties created under this section or by the court;

(7) May hire or discharge any employees, including the administrator;

(8) Shall receive and expend in a reasonable manner the revenues of the facility due on the date of the order of appointment as receiver, and to become due during the receivership;

(9) Shall do all acts necessary or appropriate to conserve the property and promote the health, safety or care of the residents of the facility;

(10) Except as hereinafter specified in section 198.115, shall honor all leases, mortgages, secured transactions or other wholly or partially executory contracts entered into by the facility's operator or administrator while acting in that capacity, but only to the extent of payments which become due or are for the use of the property during the period of the receivership;

(11) Shall be responsible, to the same extent as the operator would have been, for taxes which accrue during the period of the receivership;

(12) Shall be entitled to and shall take possession of all property or assets of residents which are in possession of an operator or administrator of the facility. The receiver shall preserve all property, assets and records of residents of which the receiver takes possession and shall provide for the prompt transfer of the property, assets and records to the alternative placement of any transferred or discharged resident;

(13) Shall provide, if upgrading of the facility or correction of the deficiencies is not possible, for the orderly transfer of all residents in the facility to other suitable facilities, or make other provisions for their continued health, safety and welfare;

(14) Shall, if any resident is transferred or discharged, provide for:

(a) Transportation of the resident and the resident's belongings and medical records to the place to which the resident is being transferred or discharged;

(b) Aid in locating an alternative placement and in discharge planning;

(c) If the resident is being transferred, preparation for transfer to mitigate transfer trauma;

(15) Shall, if any resident is to be transferred, permit participation by the resident or the resident's guardian in the selection of the resident's alternative placement;

(16) Shall, unless emergency transfer is necessary, prepare a resident under subdivisions (14)(c) and (15) by explaining alternative placements, and by providing orientation to the placement chosen by the resident or the resident's guardian.

(L. 1979 S.B. 328, et al. § 37)

198.115. Executory contracts, receiver not required to honor – when – hearing. 1. A receiver may not be required to honor any lease, mortgage, secured transaction or other wholly or partially executory contract entered into by the facility's operator or administrator while acting in that capacity, if the agreement is unconscionable. Factors which shall be considered in determining the unconscionability include, but are not limited to, the following:

(1) The person seeking payment under the agreement was an affiliate of the operator or owner at the time the agreement was made;

(2) The rental, price, or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rental, price or rate of interest at the time the agreement was entered into.

2. If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest which the receiver is permitted to avoid under subsection 1 of this section, and if the real estate or goods are necessary for the continued operation of the facility, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the duration of the receivership. The court shall hold a hearing on the application within fifteen days. The receiver shall send notice of the application to any known owners of the property involved at least ten working days prior to the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to any action against the receiver for payment or for possession of the goods or real estate subject to the lease or mortgage involved by any person who received such notice, but the payment does not relieve the owner or operator of the facility of any liability for the difference between the amount paid by the receiver and the amount due under the original lease or mortgage involved.

(L. 1979 S.B. 328, et al. § 38)

198.118. Compensation of receiver. The court shall set the compensation of the receiver, which shall be considered a necessary expense of a receivership.

(L. 1979 S.B. 328, et al. § 39)

198.121. Bond of receiver. A receiver may be required by the court to post a bond, which shall be considered a necessary expense of the receivership.

(L. 1979 S.B. 328, et al. § 40)

198.124. License may be issued to facility operated by receiver – duration. Other provisions of sections 198.003 to 198.096 notwithstanding, the department may issue a license to a facility being operated by a receiver under sections 198.099 to 198.136. The duration of a license issued under this subsection is limited to the duration of the receivership.

(L. 1979 S.B. 328, et al. § 41)

198.128. Termination of receivership, when. The court may terminate a receivership:

(1) Upon a motion by any party to the petition, by the department, or by the receiver, and a finding by the court that the deficiencies and violations in the facility have been substantially eliminated or remedied; or

(2) If all residents in the facility have been provided alternative modes of health care, either in another facility or otherwise. The court may immediately terminate the receivership, or may terminate the receivership subject to such terms as the court deems necessary or appropriate to prevent the conditions complained of from recurring.

(L. 1979 S.B. 328, et al. § 42)

198.132. Accounting by receiver, when – contents – liability for deficiency – priority of deficiency judgment. 1. Within thirty days after termination or such other time as the court may set, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected under section 198.108 and of the expenses of the receivership.

2. If the operating funds collected by the receiver under section 198.112 exceed the reasonable expenses of the receivership, the court shall order the payment of the surplus to the operator. If the operating funds are insufficient to cover reasonable expenses of the receivership, the operator shall be liable for the deficiency. The operator may apply to the court to determine the reasonableness of any expense of the receivership. The operator shall not be responsible for expenses in excess of what the court finds to be reasonable.

3. If a deficiency exists under subsection 2 of this section, the receiver may apply to the court for such a determination. If after notice to all interested parties and a hearing the court finds that in fact a deficiency does exist, then the court shall enter judgment in favor of the receiver and against the appropriate party or parties as set forth in subsection 2 of this section for the amount of such deficiency. Any judgment

obtained under this subsection shall be treated as any other judgment and may be enforced according to law.

4. Any judgment for a deficiency obtained in accordance with this section by the receiver or any portion thereof may be assigned wholly or in part upon approval of the court.

5. The judgment shall have priority over any other judgment or lien or other interest which originates subsequent to the filing of a petition for receivership under the provisions of sections 198.099 to 198.136 except for a construction or mechanic's lien arising out of work performed with the express consent of the receiver.

(L. 1979 S.B. 328, et al. § 43)

198.136. Operator or affiliate not liable for acts of receiver – liability of operator or affiliate otherwise not relieved. No operator or affiliate may be held liable for acts or omissions of the receiver or the receiver's employees during the term of the receivership. Nothing in sections 198.099 to 198.136 shall be deemed to relieve any operator or any affiliate of an operator of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the operator or affiliates of the operator prior to the appointment of a receiver under section 198.105 or 198.108, nor shall anything contained in sections 198.099 to 198.136 be construed to suspend during the receivership any obligation of the operator or any affiliate of an operator for payment of taxes or other operating and maintenance expenses of the facility, nor of the operator or affiliates of the operator for the payment of mortgages or liens.

(L. 1979 S.B. 328, et al. § 44)

198.139. Medicaid moneys not to be used for other purposes. A health care provider or vendor shall not knowingly use any moneys paid to him under Medicaid for services provided to any resident for any purpose other than that permitted by the provisions of chapter 208, RSMo, or state regulations or federal regulations or statutes governing Medicaid reimbursement.

(L. 1979 S.B. 328, et al. § 45)

198.142. Health care provider and vendor not to misrepresent or conceal facts or convert benefits for payments. A health care provider or vendor shall not knowingly:

(1) Make or cause to be made any false statement or representation of a material fact in any

application for any benefit or payment under Medicaid for services provided to any resident;

(2) Make or cause to be made any false statement or representation of any material fact for use in determining the person's eligibility for any benefit or payment under Medicaid for services provided to any resident;

(3) Conceal or fail to disclose any material fact that affects his eligibility for any benefit or payment under Medicaid for services provided to any resident or affects the eligibility of another for whom he applies or for whom he receives such benefit or payment, with the intent to secure the benefit or payment in a greater quantity than is due or to secure the benefit or payment when none is permitted;

(4) Convert a benefit or payment he receives under Medicaid for services provided to a resident for a use or benefit other than that for which it was specifically intended.

(L. 1979 S.B. 328, et al. § 46)

198.145. Kickbacks, bribes and rebates prohibited, when. A person shall not purposely solicit or receive any payment, including, without limitation, any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind, from any vendor or health care provider:

(1) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Medicaid; or

(2) In return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under Medicaid.

(L. 1979 S.B. 328, et al. § 47)

198.148. Offering or making kickbacks, bribes or rebates prohibited, when. A health care provider or vendor shall not purposely offer or make any payment, including without limitation, any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to any person to induce the person:

(1) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Medicaid; or

(2) To purchase, lease, order or arrange for or recommend purchasing, leasing or ordering any

good, facility, service or item for which payment may be made in whole or in part under Medicaid.

(L. 1979 S.B. 328, et al. § 48)

198.151. Usual trade discounts and employment benefits not kickbacks, bribes or rebates. Sections 198.145 and 198.148 do not apply to:

(1) Any usual trade discount which is dependent solely upon time of payment or quantity buying to wholesalers which is obtained by a health care provider regardless of whether reflected in the cost claimed or charges made by the health care provider under Medicaid; and

(2) Any amount paid by an employer to an employee, who has a bona fide employment relationship with the employer, for employment in the provision of covered services or items.

(L. 1979 S.B. 328, et al. § 49)

198.155. False statements by health care providers prohibited, when. 1. A health care provider shall not knowingly make or cause to be made any false statement or representation of material fact in order to qualify either upon initial certification or upon recertification to receive funds under Medicaid.

2. A health care provider shall not knowingly induce or seek to induce any such false statement or representation of material fact for consideration, whether the consideration is direct or indirect.

(L. 1979 S.B. 328, et al. § 50)

198.158. Penalties for violation of sections 198.139 to 198.155. 1. A person committing any act in violation of any provision of sections 198.139 to 198.155 is guilty of a class D felony.

2. A vendor or health care provider convicted of a criminal violation of sections 198.139 to 198.155 shall be prohibited from receiving future moneys under Medicaid or from providing services under Medicaid for or on behalf of any other health care provider. However, the director of the department or his designee shall review this prohibition upon the petition of a vendor or health care provider so convicted and, for good cause shown, may reinstate the vendor or health care provider as being eligible to receive funds under Medicaid. The decision of the director or his designee shall be made in writing after the director of the fraud investigation division is allowed the opportunity to state his position concerning such petition.

3. A vendor or health care provider committing any act or omission in violation of sections 198.139 to 198.155 shall be civilly liable to the state for any moneys obtained under Medicaid as a result of such act or omission.

(L. 1979 S.B. 328, et al. § 51)

198.161. Fraud investigation division created – director – compensation – assistance by local prosecutors. 1. There is hereby created within the department of social services a "Fraud Investigation Division". The fraud investigation division shall be headed by a division director appointed by the director of the department of social services. The director of the fraud investigation division shall be an attorney at law licensed to practice in this state and shall have substantial experience in criminal prosecution or defense. The director of the fraud investigation division shall receive such compensation as the director of the department of social services may designate subject to appropriation by the general assembly. The director of the fraud investigation division may employ such attorneys, accountants, investigators and such other personnel as are necessary to conduct the activities of the division. A team approach to the operations of the division shall be utilized wherever practicable.

2. The director of the fraud investigation division, with such assistance as he may require from the appropriate county prosecuting attorney, shall investigate suspected violations of sections 198.139 to 198.155 and any civil liabilities due the state as a result of any such violation. Evidence of actions which may constitute criminal violations under sections 198.139 to 198.155 shall be referred to the appropriate county prosecuting attorney. If the prosecuting attorney fails or refuses to initiate prosecution on a cause referred to him by the director of the fraud investigation division within sixty days after he is made aware by complaint of an alleged violation, the prosecuting attorney shall so notify the attorney general, who may take full charge of the prosecution and may initiate prosecution by information or indictment for the violation.

(L. 1979 S.B. 328, et al. § 52)

198.165. Medicaid payments stopped by division, when – hearing. 1. When the director of the investigation division has probable cause to believe that a health care provider is committing any act or omission in violation of any provision of sections 198.139 to 198.186, he may petition an appropriate court for an order to stop payments under Medicaid to the health care provider pending

completion of the investigation and litigation under sections 198.139 to 198.186.

2. The court shall allow the health care provider the opportunity to be heard on the request of the director of the fraud investigation division and shall decide, in writing, whether to stop payments to the health care provider.

(L. 1979 S.B. 328, et al. § 53)

198.168. Fraud investigation director may petition for appointment of receiver, when – court hearing. If the director of the fraud investigation division has probable cause to believe that any acts or omissions in violation of sections 198.139 to 198.155 have been committed by a person who is in control of assets purchased, in whole or in part, directly or indirectly, with funds from Medicaid and is likely to convert, destroy or remove those assets, the director of the fraud investigation division can petition the circuit court of the county in which those assets may be found to appoint a receiver to manage those assets until the investigation and any litigation are completed. The circuit court immediately upon receipt of the petition of the director of the fraud investigation division shall enjoin the person in control of the assets from converting, destroying or removing those assets. A hearing for the appointment of a receiver shall be held within ten days of the filing of the petition. If the court finds that there is probable cause to believe the person has committed any acts or omissions in violation of any provisions of sections 198.139 to 198.155 and that the assets are likely to be converted, destroyed or removed, the circuit court shall appoint a receiver to manage the assets until the investigation and any litigation are completed. The court shall maintain continuing jurisdiction over the assets and may modify its orders as circumstances require. The order appointing a receiver shall be a final order for purposes of appeal.

(L. 1979 S.B. 328, et al. § 54)

198.171. Civil restitution of Medicaid funds, when. The director of the fraud investigation division may seek civil restitution of any moneys dispensed under Medicaid for services provided to any resident or under section 208.030, RSMo, which have been misappropriated, fraudulently obtained, or constitute overpayments. The authority of the director of the fraud investigation division under sections 198.139 to 198.186 to seek civil restitution does not diminish the authority of the department to seek restitution.

(L. 1979 S.B. 328, et al. § 55)

198.174. Fraud investigation director may hold hearings, take oaths – procedure on failure to testify – confidentiality of recorders – penalties. 1. For the purpose of any investigation or proceeding under sections 198.158 to 198.171, the director of fraud investigation or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take testimony, require answers to written interrogatories and require production of any books, papers, correspondence, memoranda, agreements or other documents or records which the director of fraud investigation deems relevant and material to the inquiry.

2. In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the circuit court of any county of the state or the city of St. Louis, upon application by the division director may issue to the person an order requiring him to appear before the division director, or the officer designated by him, there to produce documentary evidence if so ordered or to give testimony or answer interrogatories touching the matter under investigation or in question in accordance with the forms and procedures otherwise authorized by the Rules of Civil Procedure. The court may make any order which justice requires to protect any person from undue annoyance, embarrassment, expense or oppression. Failure to obey the order of the court may be punished by the court as a contempt of court.

3. Notwithstanding the provisions of section 326.151, RSMo, the accountant_client privilege recognized therein shall not, upon a knowing and intelligent waiver by any person subject to sections 198.003 to 198.186, constitute a defense and shall not apply to a subpoena under this section and shall not apply in court proceedings instituted pursuant to sections 198.139 to 198.186.

4. Information or documents obtained under this section by the director of the fraud investigation division shall not be disclosed except in the course of civil or criminal litigation or to another prosecutorial or investigative agency, or to the divisions of the department.

5. Anyone improperly disclosing information obtained under this section is guilty of a class A misdemeanor.

6. The provisions of this section do not repeal existing provisions of law and shall be construed as supplementary thereto.

(L. 1979 S.B. 328, et al. § 56)

198.177. Compelling of testimony – grant of immunity, when. 1. In any investigation or proceeding under sections 198.139 to 198.186 in which any person has been or may be called to testify, produce evidence or provide other information by means of a subpoena or before a court or grand jury, if the person refuses to answer any question or produce evidence or material of any kind on the ground that he may be incriminated thereby, the director of the fraud investigation division may, in writing, request the circuit court of the county in which the proceeding is held to order the person to answer the question or produce the evidence. Upon receipt of the request, the court shall hold a hearing on said written request after written notice to the person specifying the nature of the request and the time and place of the hearing, and advising the person of his right to be present and his right to counsel at such hearing. At the hearing the director of the fraud investigation division and the person may participate. The burden of proof is on the director of the division to demonstrate to the court (1) the necessity for and (2) the reasonableness of the request to order the person to answer the question or produce the evidence or both. If the court is satisfied that such burden has been met, it may issue an order requiring the person to answer the questions or produce the evidence, or both, which he refuses to give or produce on the basis of his privilege against self-incrimination. If the court believes such burden has not been met, it shall dismiss the request. When the order is communicated to the person, the person may not refuse to comply with the order on the basis of his privilege against self-incrimination. After complying with the order and giving the testimony or producing the evidence, no testimony or other evidence or information obtained or any information directly or indirectly derived from the testimony or evidence may be used against the person in any proceeding or prosecution for any offense concerning which he gave answer or produced evidence under court order, except a prosecution for perjury, false swearing or contempt committed in answering or failing to answer, or in the producing or failing to produce evidence in accordance with the order.

2. If any person refuses to testify after being granted immunity from prosecution under sections 198.139 to 198.186 and after being ordered to testify or produce evidence, the court may find the person in contempt.

(L. 1979 S.B. 328, et al. § 57)

198.180. Audit and inspection of records when – warrant. During any investigation under sections 198.139 to 198.186, the director of the fraud investigation division shall have the right to audit and to inspect the records of any health care provider or vendor. If the health care provider or vendor refuses to allow such audit or inspection or if there is reason to believe that the records are in danger of being destroyed, altered or secreted, the director of the fraud investigation division may make written application under oath to any court in the county where the records in question are being kept, or in Cole County, and if the judge shall be satisfied that there is reasonable cause for the audit or inspection or reasonable cause to believe that the records are in danger of being destroyed, altered or secreted, he shall issue a warrant to search for and seize such records.

(L. 1979 S.B. 328, et al. § 58)

198.183. State agencies and law enforcement officers to cooperate with fraud investigation division. 1. All state agencies shall cooperate with the director of the fraud investigation division in his efforts to enforce the provisions of sections 198.139 to 198.186. All officers of the state of Missouri charged with the enforcement of criminal law shall also render and furnish to the director of the fraud investigation division, when requested, all information and assistance in their possession or within their power relating to sections 198.139 to 198.186.

2. The department and all of its other divisions shall promptly notify the director of the fraud investigation division of any substantial complaint or allegation of possible fraudulent activity on the part of a health care provider or vendor under Medicaid and shall refer to the director of the fraud investigation division all suspected cases of fraud in Medicaid services provided to any resident.

3. The director of the fraud investigation division shall be allowed access to all information in the possession of the department which relates to Medicaid services provided to any resident. The department shall make available to the director of the fraud investigation division electronic data processing services pertaining to such Medicaid information.

(L. 1979 S.B. 328, et al. § 59)

198.186. Local crime investigation powers not diminished. The powers of the director of the fraud investigation division under sections 198.139 to 198.186 shall not diminish the powers of local authorities to investigate criminal conduct within their jurisdiction.

(L. 1979 S.B. 328, et al. § 60)

ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

198.500. Citation of law. Sections 198.500 to 198.515 shall be known and may be cited as the "Alzheimer's Special Care Disclosure Act".

(L. 1996 H.B. 781 § 1)

198.505. Definitions. For the purposes of sections 198.500 to 198.515, "Alzheimer's special care unit" or "Alzheimer's special care program" means any facility as defined in section 198.006, or any home health agency, adult day care center, hospice or adult foster home that locks, secures, segregates or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease or a related disorder, to prevent or limit access by a resident outside the designated or separated area; and that advertises, markets or otherwise promotes the facility as providing specialized Alzheimer's or dementia care services.

(L. 1996 H.B. 781 § 2)

198.510. Disclosure required, by whom – licensing department, duties – department of social services, duties – department of health, duties. 1. Any facility which offers to provide or provides care for persons with Alzheimer's disease by means of an Alzheimer's special care unit or Alzheimer's special care program shall be required to disclose the form of care or treatment provided that distinguishes that unit or program as being especially applicable, or suitable for persons with Alzheimer's or dementia. The disclosure shall be made to the department which licenses the facility, agency or center giving the special care. At the time of admission of a patient requiring treatment rendered by the Alzheimer's special care program, a copy of the disclosure made to the department shall be delivered by the facility to the patient and the patient's next of kin, designee, or guardian. The licensing department shall examine all such disclosures in the department's records and verify the information on the disclosure for accuracy as part of the facility's regular license renewal procedure.

2. The department of social services and the department of health and senior services shall develop a single disclosure form to be completed by the facility, agency or center giving the special care. The information required to be disclosed by subsection 1 of this section on this form shall include, if applicable, an explanation of how the care is different from the rest of the facility in the following areas:

(1) The Alzheimer's special care unit's or program's written statement of its overall philosophy and mission which reflects the need of residents afflicted with dementia;

(2) The process and criteria for placement in, transfer or discharge from, the unit or program;

(3) The process used for assessment and establishment of the plan of care and its implementation, including the method by which the plan of care evolves and is responsive to changes in condition;

(4) Staff training and continuing education practices;

(5) The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;

(6) The frequency and types of resident activities;

(7) The involvement of families and the availability of family support programs;

(8) The costs of care and any additional fees; and

(9) Safety and security measures.

(L. 1996 H.B. 781 § 3)

198.515. Alzheimer's facilities, informational documents required – division of aging, duties – licensing department, verification. Any facility which offers to provide or provides care for persons with Alzheimer's disease by means of an Alzheimer's special care unit or Alzheimer's special care program shall be required to provide an informational document developed by or approved by the division of aging. The document shall include but is not limited to updated information on selecting an Alzheimer's special care unit or Alzheimer's special care program. The document shall be given to any person seeking information about or placement in an Alzheimer's special care unit or Alzheimer's special care program. The distribution of this document shall be verified by the licensing department as part of the facility's regular license renewal procedure.

(L. 1996 H.B. 781 § 4)

INSPECTION REQUIREMENTS

198.525. Inspection of certain long-term care facilities, when. Except as otherwise provided pursuant to section 198.526, in order to comply with sections 198.012 and 198.022, the department of health and senior services shall inspect residential care facilities I, residential care facilities II, intermediate care facilities, and skilled nursing, including those facilities attached to acute care hospitals at least twice a year.

(L. 1999 S.B. 8 & 173 § 4, A.L. 2003 S.B. 556 & 311)

198.526. Biannual inspections – reevaluation of inspection process – reduction in inspection schedule, when – disclosure of inspection schedule limited, penalty for violation. 1. Except as provided in subsection 3 of this section, the department of health and senior services shall inspect all facilities licensed by the department at least twice each year. Such inspections shall be conducted:

(1) Without the prior notification of the facility; and

(2) At times of the day, on dates and at intervals which do not permit facilities to anticipate such inspections.

2. The department shall annually reevaluate the inspection process to ensure the requirements of subsection 1 of this section are met.

3. The department may reduce the frequency of inspections to once a year if a facility is found to be in substantial compliance. The basis for such determination shall include, but not be limited to, the following:

(1) Previous inspection reports;

(2) The facility's history of compliance with rules promulgated pursuant to this chapter;

(3) The number and severity of complaints received about the facility; and

(4) In the year subsequent to a finding of no class I violations or class II violations, the facility does not have a change in ownership, operator, or, if the department finds it significant, a change in director of nursing.

4. Information regarding unannounced inspections shall be disclosed to employees of the department on a need to know basis only. Any employee of the department who knowingly discloses the time of an unannounced inspection in violation of

this section is guilty of a class A misdemeanor and shall have his or her employment immediately terminated.

(L. 1999 S.B. 326 § 4, A.L. 2003 S.B. 556 & 311)

CROSS REFERENCE:

Rulemaking authority, RSMo 198.534

198.527. Inspectors and surveyors of long-term care facilities – uniformity of application of regulation standards. To ensure uniformity of application of regulation standards in long-term care facilities throughout the state, the department of social services shall:

(1) Evaluate the requirements for inspectors or surveyors of facilities, including the eligibility, training and testing requirements for the position. Based on the evaluation, the department shall develop and implement additional training and knowledge standards for inspectors and surveyors;

(2) Periodically evaluate the performance of the inspectors or surveyors regionally and statewide to identify any deviations or inconsistencies in regulation application. At a minimum, the Missouri on-site surveyor evaluation process, and the number and type of actions overturned by the informal dispute resolution process and formal appeal shall be used in the evaluation. Based on such evaluation, the department shall develop standards and a retraining process for the region, state, or individual inspector or surveyor, as needed;

(3) In addition to the provisions of subdivisions (1) and (2) of this section, the department shall develop a single uniform comprehensive and mandatory course of instruction for inspectors/surveyors on the practical application of enforcement of statutes, rules and regulations. Such course shall also be open to attendance by administrators and staff of facilities licensed pursuant to this chapter.

(L. 1999 H.B. 316, et al. § 2)

198.528. Long-term care facility information to be provided on department Internet web site.

1. The department of health and senior services shall provide through its Internet web site:

(1) The most recent survey of every long-term care facility licensed in this state and any such findings of deficiencies and the effect the deficiency would have on such facility. If such survey is in dispute, the survey shall not be posted on the web site until the facility's informal dispute resolution process

resolves the dispute and the department shall, upon request of the facility, post the facility's response;

(2) The facility's proposed plan of correction;

(3) A link to the federal web site that provides a summary of facility surveys conducted over the last three years; and

(4) Information on how to obtain a copy of a complete facility survey conducted over the last three years.

2. Nothing in this section shall be construed as requiring the department to post any information on its Internet web site that is prohibited from disclosure pursuant to the federal Health Insurance Portability and Accountability Act, as amended.

(L. 2003 S.B. 556 & 311)

MANAGED CARE SERVICES PROVIDED IN FACILITIES

198.530. Managed care services provided in long-term care facilities, when, conditions – reimbursement rate – services included. 1. If an enrollee in a managed care organization is also a resident in a long-term care facility licensed pursuant to chapter 198, or a continuing care retirement community, as defined in section 197.305, RSMo, such enrollee's managed care organization shall provide the enrollee with the option of receiving the covered service in the long-term care facility which serves as the enrollee's primary residence. For purposes of this section, "managed care organization" means any organization that offers any health plan certified by the department of health and senior services designed to provide incentives to medical care providers to manage the cost and use of care associated with claims, including, but not limited to, a health maintenance organization and preferred provider organization. The resident enrollee's managed care organization shall reimburse the resident facility for those services which would otherwise be covered by the managed care organization if the following conditions apply:

(1) The facility is willing and able to provide the services to the resident; and

(2) The facility and those health care professionals delivering services to residents pursuant to this section meet the licensing and training standards as prescribed by law; and

(3) The facility is certified through Medicare; and

(4) The facility and those health care professionals delivering services to residents pursuant to this section agree to abide by the terms and conditions of the health carrier's contracts with similar providers, abide by patient protection standards and requirements imposed by state or federal law for plan enrollees and meet the quality standards established by the health carrier for similar providers.

2. The managed care organization shall reimburse the resident facility at a rate of reimbursement not less than the Medicare allowable rate pursuant to Medicare rules and regulations.

3. The services in subsection 1 of this section shall include, but are not limited to, skilled nursing care, rehabilitative and other therapy services, and postacute care, as needed. Nothing in this section shall limit the managed care organization from utilizing contracted providers to deliver the services in the enrollee's resident facility.

4. A resident facility shall not prohibit a health carrier's participating providers from providing covered benefits to an enrollee in the resident facility. A resident facility or health care professional shall not impose any charges on an enrollee for any service that is ancillary to, a component of, or in support of the services provided under this section when the services are provided by a health carrier's participating provider, or otherwise create a disincentive for the use of the health carrier's participating providers. Any violation of the requirements of this subsection by the resident facility shall be considered abuse or neglect of the resident enrollee.

(L. 1999 H.B. 316, et al. § 3)

AGING-IN-PLACE PILOT PROJECT

198.531. Aging-in-Place pilot program established – program requirements and monitoring – rulemaking authority. 1. The division of aging, in collaboration with qualified Missouri schools and universities, shall establish an aging in place pilot program at a maximum of four selected sites throughout the state which will provide a continuum of care for elders who need long-term care. For purposes of this section, "qualified Missouri schools and universities" means any Missouri school or university which has a school of nursing, a graduate nursing program, or any other similar program or specialized expertise in the areas of aging, long-term care or health services for the elderly.

2. The pilot program shall:

(1) Deliver a full range of physical and mental health services to residents in the least restrictive environment of choice to reduce the necessity of relocating such residents to other locations as their health care needs change;

(2) Base licensure on services provided rather than on facility type; and

(3) Be established in selected urban, rural and regional sites throughout the state.

3. The directors of the division of aging and division of medical services shall apply for all federal waivers necessary to provide Medicaid reimbursement for health care services received through the aging in place pilot program.

4. The division of aging shall monitor the pilot program and report to the general assembly on the effectiveness of such program, including quality of care, resident satisfaction and cost effectiveness to include the cost equivalent of unpaid or volunteer labor.

5. Developments authorized by this section shall be exempt from the provisions of sections 197.300 to 197.367, RSMo, and shall be licensed by the division of aging.

(L. 1999 S.B. 326 § 9, A.L. 2001 S.B. 266)

INVESTIGATION OF COMPLAINTS

198.532. Investigation of complaints – results provided, when. 1. Complaints filed with the department of health and senior services against a long-term care facility which allege that harm has occurred or is likely to occur to a resident or residents of the facility due to actions or the lack of actions taken by the facility shall be investigated within thirty days of receipt of such complaints. The purpose of such investigation shall be to ensure the safety, protection and care of all residents of the facility likely to be affected by the alleged action or inaction. Such investigation shall be in addition to the investigation requirements for abuse and neglect reports pursuant to section 198.070.

2. The department shall provide the results of all investigations in accordance with section 660.320, RSMo. The department shall provide the results of such investigation in writing to all parties to the complaint, and if requested, to any of the facility's residents, or their family members or guardians. Complaints and written results will be readily available for public access and review at the

department of health and senior services and at the long-term care facility. Personal information identifying the resident will be blanked out, except in regard to immediate family, the attorney in fact or the legal guardian of the resident in question. This information will remain readily available for a period of time determined by the department of health and senior services.

(L. 1999 S.B. 326 § 1, A.L. 2003 S.B. 556 & 311)

198.533. Conflict of interest, state investigators. The division shall ensure that any monitor selected to perform state investigations of long-term care facilities has no conflict of interest, and has no direct or indirect connection to the facility or its parent corporation.

(L. 1999 S.B. 326 § 2)

198.534. Rulemaking authority. In consultation with consumers, providers and others, the division shall promulgate rules and regulations to implement the provisions of this section and sections 198.080, 198.086, 198.526, 198.532 and 198.533. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section and sections 198.080, 198.086, 198.526, 198.532 and 198.533 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

(L. 1999 S.B. 326 § 6)

INFORMAL DISPUTE RESOLUTION PILOT PROJECT

198.540. Informal dispute resolution pilot project established – report to general assembly. By January 1, 2000, the division of aging shall establish an informal dispute resolution pilot project in one area of the state to be designated by the division. Such pilot project shall require that, if requested, a division representative provide at least one face-to-face conference in a timely fashion with a facility resident or such resident's family members or guardians when a resident is the subject of a complaint investigation, or cited in a facility inspection or survey completed by the division

pursuant to this chapter. The primary purpose of such face to_ face conference shall be to obtain information and facilitate a satisfactory resolution of any concerns communicated by a resident, a resident's family members or guardians. By December 31, 2001, the division shall report to the general assembly on the effectiveness of the pilot project, and include recommendations for continuing, expanding or modifying the project.

(L. 1999 S.B. 326 § 7)

UNIFORM DATA MANAGEMENT

198.600. Uniform data management pilot program established, purpose, monitoring. 1. The department of health and senior services shall establish a "Uniform Data Management Pilot Program" at a minimum of fifty selected facilities of varying licensure or classification throughout the state to improve patient care and retention of nursing facility staff. The department shall determine the nature and extent of the pilot program and provide all necessary resources.

2. The pilot program shall be implemented no later than six months after funding for the pilot program is made available.

3. The pilot program shall:

(1) Encourage the utilization of existing or the purchase of new software in an effort to modernize the procedures for compiling and disseminating data for long-term care facilities;

(2) Enable physicians, licensed nurses, and facility personnel to devote more quality time to patient care; and

(3) Be established in selected urban, rural, and regional sites throughout the state.

4. The department of health and senior services shall monitor the pilot program and report to the general assembly by January first next following the implementation of the pilot program pursuant to this section on the effectiveness of such program, including quality of care, employee satisfaction, and cost effectiveness.

CHAPTER 660
RSMo 2001

**DEPARTMENT OF HEALTH AND
SENIOR SERVICES**

660.050. Division of aging created – duties – inspectors of nursing homes, training and continuing education requirements – promulgation of rules, procedure – dementia-specific training requirements established. 1. The "Division of Aging" is hereby transferred from the department of social services to the department of health and senior services by a type I transfer as defined in the Omnibus State Reorganization Act of 1974. The division shall aid and assist the elderly and low-income handicapped adults living in the state of Missouri to secure and maintain maximum economic and personal independence and dignity. The division shall regulate adult long-term care facilities pursuant to the laws of this state and rules and regulations of federal and state agencies, to safeguard the lives and rights of residents in these facilities.

2. In addition to its duties and responsibilities enumerated pursuant to other provisions of law, the division shall:

(1) Serve as advocate for the elderly by promoting a comprehensive, coordinated service program through administration of Older Americans Act (OAA) programs (Title III) P.L. 89-73, (42 U.S.C. 3001, et seq.), as amended;

(2) Assure that an information and referral system is developed and operated for the elderly, including information on the Missouri care options program;

(3) Provide technical assistance, planning and training to local area agencies on aging;

(4) Contract with the federal government to conduct surveys of long-term care facilities certified for participation in the Title XVIII program;

(5) Serve as liaison between the department of health and senior services and the Federal Health Standards and Quality Bureau, as well as the Medicare and Medicaid portions of the United States Department of Health and Human Services;

(6) Conduct medical review (inspections of care) activities such as utilization reviews, independent professional reviews, and periodic medical reviews to determine medical and social needs for the purpose of eligibility for Title XIX, and for level of care determination;

(7) Certify long-term care facilities for participation in the Title XIX program;

(8) Conduct a survey and review of compliance with P.L. 96-566 Sec. 505(d) for Supplemental Security Income recipients in long-term care facilities and serve as the liaison between the Social Security Administration and the department of health and senior services concerning Supplemental Security Income beneficiaries;

(9) Review plans of proposed long-term care facilities before they are constructed to determine if they meet applicable state and federal construction standards;

(10) Provide consultation to long-term care facilities in all areas governed by state and federal regulations;

(11) Serve as the central state agency with primary responsibility for the planning, coordination, development, and evaluation of policy, programs, and services for elderly persons in Missouri consistent with the provisions of subsection 1 of this section and serve as the designated state unit on aging, as defined in the Older Americans Act of 1965;

(12) With the advice of the governor's advisory council on aging, develop long-range state plans for programs, services, and activities for elderly and handicapped persons. State plans should be revised annually and should be based on area agency on aging plans, statewide priorities, and state and federal requirements;

(13) Receive and disburse all federal and state funds allocated to the division and solicit, accept, and administer grants, including federal grants, or gifts made to the division or to the state for the benefit of elderly persons in this state;

(14) Serve, within government and in the state at large, as an advocate for elderly persons by holding hearings and conducting studies or investigations concerning matters affecting the health, safety, and welfare of elderly persons and by assisting elderly persons to assure their rights to apply for and receive services and to be given fair hearings when such services are denied;

(15) Provide information and technical assistance to the governor's advisory council on aging and keep the council continually informed of the activities of the division;

(16) After consultation with the governor's advisory council on aging, make recommendations for legislative action to the governor and to the general assembly;

(17) Conduct research and other appropriate activities to determine the needs of elderly persons in this state, including, but not limited to, their needs for social and health services, and to determine what existing services and facilities, private and public, are available to elderly persons to meet those needs;

(18) Maintain and serve as a clearinghouse for up-to-date information and technical assistance related to the needs and interests of elderly persons and persons with Alzheimer's disease or related dementias, including information on the Missouri care options program, dementia_ specific training materials and dementia specific trainers. Such dementia_ specific information and technical assistance shall be maintained and provided in consultation with agencies, organizations and/or institutions of higher learning with expertise in dementia care;

(19) Provide area agencies on aging with assistance in applying for federal, state, and private grants and identifying new funding sources;

(20) Determine area agencies on aging annual allocations for Title XX and Title III of the Older Americans Act expenditures;

(21) Provide transportation services, home delivered and congregate meals, in-home services, counseling and other services to the elderly and low-income handicapped adults as designated in the Social Services Block Grant Report, through contract with other agencies, and shall monitor such agencies to ensure that services contracted for are delivered and meet standards of quality set by the division;

(22) Monitor the process pursuant to the federal Patient Self-determination Act, 42 U.S.C. 1396a (w), in long-term care facilities by which information is provided to patients concerning durable powers of attorney and living wills.

3. The division director, subject to the supervision of the director of the department of health and senior services, shall be the chief administrative officer of the division and shall exercise for the division the powers and duties of an appointing authority pursuant to chapter 36, RSMo, to employ such administrative, technical and other personnel as may be necessary for the performance of the duties and responsibilities of the division.

4. The division may withdraw designation of an area agency on aging only when it can be shown the federal or state laws or rules have not been complied with, state or federal funds are not being expended for the purposes for which they were intended, or the elderly are not receiving appropriate services within

available resources, and after consultation with the director of the area agency on aging and the area agency board. Withdrawal of any particular program of services may be appealed to the director of the department of health and senior services and the governor. In the event that the division withdraws the area agency on aging designation in accordance with the Older Americans Act, the division shall administer the services to clients previously performed by the area agency on aging until a new area agency on aging is designated.

5. Any person hired by the department of health and senior services after August 13, 1988, to conduct or supervise inspections, surveys or investigations pursuant to chapter 198, RSMo, shall complete at least one hundred hours of basic orientation regarding the inspection process and applicable rules and statutes during the first six months of employment. Any such person shall annually, on the anniversary date of employment, present to the department evidence of having completed at least twenty hours of continuing education in at least two of the following categories: communication techniques, skills development, resident care, or policy update. The department of health and senior services shall by rule describe the curriculum and structure of such continuing education.

6. The division may issue and promulgate rules to enforce, implement and effectuate the powers and duties established in this section and sections 198.070 and 198.090, RSMo, and sections 660.250 and 660.300 to 660.320. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

7. Missouri care options is a program, operated and coordinated by the division of aging, which informs individuals of the variety of care options available to them when they may need long-term care.

8. The division shall, by January 1, 2002, establish minimum dementia specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related

dementias who are employed by skilled nursing facilities, intermediate care facilities, residential care facilities, agencies providing in-home care services authorized by the division of aging, adult daycare programs, independent contractors providing direct care to persons with Alzheimer's disease or related dementias and the division of aging. Such training shall be incorporated into new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The department of health and senior services shall, by January 1, 2002, establish minimum dementia specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related dementias who are employed by home health and hospice agencies licensed by chapter 197, RSMo. Such training shall be incorporated into the home health and hospice agency's new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The dementia training need not require additional hours of orientation or ongoing in-service. Training shall include at a minimum, the following:

(1) For employees providing direct care to persons with Alzheimer's disease or related dementias, the training shall include an overview of Alzheimer's disease and related dementias, communicating with persons with dementia, behavior management, promoting independence in activities of daily living, and understanding and dealing with family issues;

(2) For other employees who do not provide direct care for, but may have daily contact with, persons with Alzheimer's disease or related dementias, the training shall include an overview of dementias and communicating with persons with dementia.

As used in this subsection, the term "employee" includes persons hired as independent contractors. The training requirements of this subsection shall not be construed as superceding any other laws or rules regarding dementia specific training.

(L. 1984 H.B. 1131 § 2, A.L. 1988 S.B. 602, A.L. 1992 S.B. 573 & 634, A.L. 1993 S.B. 52, A.L. 1994 H.B. 1335 & 1381, A.L. 1995 H.B. 409 merged with S.B. 445 merged with S.B. 3, A.L. H.B. 603)

EMPLOYEE DISQUALIFICATION AND CRIMINAL BACKGROUND CHECKS

660.315. Employee disqualification list, notification of placement, contents – challenge of allegation, procedure – hearing, procedure – appeal – removal of name from list – list provided to whom – prohibition of employment. 1. After an investigation and a determination has been made to place a person's name on the employee disqualification list, that person shall be notified in writing mailed to his or her last known address that:

(1) An allegation has been made against the person, the substance of the allegation and that an investigation has been conducted which tends to substantiate the allegation;

(2) The person's name will be included in the employee disqualification list of the department;

(3) The consequences of being so listed including the length of time to be listed; and

(4) The person's rights and the procedure to challenge the allegation.

2. If no reply has been received within thirty days of mailing the notice, the department may include the name of such person on its list. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director or the director's designee, based upon the criteria contained in subsection 9 of this section.

3. If the person so notified wishes to challenge the allegation, such person may file an application for a hearing with the department. The department shall grant the application within thirty days after receipt by the department and set the matter for hearing, or the department shall notify the applicant that, after review, the allegation has been held to be unfounded and the applicant's name will not be listed.

4. If a person's name is included on the employee disqualification list without notice by the department, such person may file a request with the department for removal of the name or for a hearing. Within thirty days after receipt of the request, the department shall either remove the name from the list or grant a hearing and set a date therefor.

5. Any hearing shall be conducted in the county of the person's residence by the director of the department or the director's designee. The provisions of chapter 536, RSMo, for a contested case except those provisions or amendments which are in conflict with this section, shall apply to and govern the proceedings contained in this section and the rights

and duties of the parties involved. The person appealing such an action shall be entitled to present evidence, pursuant to the provisions of chapter 536, RSMo, relevant to the allegations.

6. Upon the record made at the hearing, the director of the department or the director's designee shall determine all questions presented and shall determine whether the person shall be listed on the employee disqualification list. The director of the department or the director's designee shall clearly state the reasons for his or her decision and shall include a statement of findings of fact and conclusions of law pertinent to the questions in issue.

7. A person aggrieved by the decision following the hearing shall be informed of his or her right to seek judicial review as provided under chapter 536, RSMo. If the person fails to appeal the director's findings, those findings shall constitute a final

determination that the person shall be placed on the employee disqualification list.

8. A decision by the director shall be inadmissible in any civil action brought against a facility or the in-home services provider agency and arising out of the facts and circumstances which brought about the employment disqualification proceeding, unless the civil action is brought against the facility or the in-home services provider agency by the department of health and senior services or one of its divisions.

9. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director of the department of health and senior services or the director's designee, based upon the following:

(1) Whether the person acted recklessly or knowingly, as defined in chapter 562, RSMo;

(2) The degree of the physical, sexual, or emotional injury or harm; or the degree of the imminent danger to the health, safety or welfare of a resident or in-home services client;

(3) The degree of misappropriation of the property or funds, or falsification of any documents for service delivery of an in-home services client;

(4) Whether the person has previously been listed on the employee disqualification list;

(5) Any mitigating circumstances;

(6) Any aggravating circumstances; and

(7) Whether alternative sanctions resulting in conditions of continued employment are appropriate in lieu of placing a person's name on the employee

disqualification list. Such conditions of employment may include, but are not limited to, additional training and employee counseling. Conditional employment shall terminate upon the expiration of the designated length of time and the person's submitting documentation which fulfills the department of health and senior services' requirements.

10. The removal of any person's name from the list under this section shall not prevent the director from keeping records of all acts finally determined to have occurred under this section.

11. The department shall provide the list maintained pursuant to this section to other state departments upon request and to any person, corporation or association who:

(1) Is licensed as an operator under chapter 198, RSMo;

(2) Provides in-home services under contract with the department;

(3) Employs nurses and nursing assistants for temporary or intermittent placement in health care facilities;

(4) Is approved by the department to issue certificates for nursing assistants training; or

(5) Is an entity licensed under chapter 197, RSMo. The department shall inform any person listed above who inquires of the department whether or not a particular name is on the list. The department may require that the request be made in writing.

12. No person, corporation or association who received the employee disqualification list under subsection 11 of this section shall knowingly employ any person who is on the employee disqualification list. Any person, corporation or association who received the employee disqualification list under subsection 11 of this section, or any person responsible for providing health care service, who declines to employ or terminates a person whose name is listed in this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

13. Any employer who is required to discharge an employee because the employee was placed on a disqualification list maintained by the department of health and senior services after the date of hire shall not be charged for unemployment insurance benefits

based on wages paid to the employee for work prior to the date of discharge, pursuant to section 288.100, RSMo.

14. Any person who has been listed on the employee disqualification list may request that the director remove his or her name from the employee disqualification list. The request shall be written and may not be made more than once every twelve months. The request will be granted by the director upon a clear showing, by written submission only, that the person will not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the falsification of any documents of service delivery to an in-home services client. The director may make conditional the removal of a person's name from the list on any terms that the director deems appropriate, and failure to comply with such terms may result in the person's name being relisted. The director's determination of whether to remove the person's name from the list is not subject to appeal.

(L. 1992 S.B. 573 & 634)

660.317. Criminal background checks of employees, required when – persons with criminal history not to be hired, when, penalty – failure to disclose, penalty – improper hirings, penalty – definitions – rules to waive hiring restrictions. 1. For the purposes of this section, the term "provider" means any person, corporation or association who:

(1) Is licensed as an operator pursuant to chapter 198, RSMo;

(2) Provides in-home services under contract with the department;

(3) Employs nurses or nursing assistants for temporary or intermittent placement in health care facilities;

(4) Is an entity licensed pursuant to chapter 197, RSMo;

(5) Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department of mental health; or

(6) Is a licensed adult day care provider.

2. For the purpose of this section "patient or resident" has the same meaning as such term is defined in section 43.540, RSMo.

3. Prior to allowing any person who has been hired as a full-time, part-time or temporary position to have contact with any patient or resident the provider shall, or in the case of temporary employees

hired through or contracted for an employment agency, the employment agency shall prior to sending a temporary employee to a provider:

(1) Request a criminal background check as provided in section 43.540, RSMo. Completion of an inquiry to the highway patrol for criminal records that are available for disclosure to a provider for the purpose of conducting an employee criminal records background check shall be deemed to fulfill the provider's duty to conduct employee criminal background checks pursuant to this section; except that, completing the inquiries pursuant to this subsection shall not be construed to exempt a provider from further inquiry pursuant to common law requirements governing due diligence. If an applicant has not resided in this state for five consecutive years prior to the date of his or her application for employment, the provider shall request a nationwide check for the purpose of determining if the applicant has a prior criminal history in other states. The fingerprint cards and any required fees shall be sent to the highway patrol's criminal records division. The first set of fingerprints shall be used for searching the state repository of criminal history information. If no identification is made, the second set of fingerprints shall be forwarded to the Federal Bureau of Investigation, Identification Division, for the searching of the federal criminal history files. The patrol shall notify the submitting state agency of any criminal history information or lack of criminal history information discovered on the individual. The provisions relating to applicants for employment who have not resided in this state for five consecutive years shall apply only to persons who have no employment history with a licensed Missouri facility during that five-year period. Notwithstanding the provisions of section 610.120, RSMo, all records related to any criminal history information discovered shall be accessible and available to the provider making the record request; and

(2) Make an inquiry to the department of health and senior services whether the person is listed on the employee disqualification list as provided in section 660.315.

4. When the provider requests a criminal background check pursuant to section 43.540, RSMo, the requesting entity may require that the applicant reimburse the provider for the cost of such record check. When a provider requests a nationwide criminal background check pursuant to subdivision (1) of subsection 3 of this section, the total cost to the provider of any background check required pursuant to this section shall not exceed five dollars which

shall be paid to the state. State funding and the obligation of a provider to obtain a nationwide criminal background check shall be subject to the availability of appropriations.

5. An applicant for a position to have contact with patients or residents of a provider shall:

(1) Sign a consent form as required by section 43.540, RSMo, so the provider may request a criminal records review;

(2) Disclose the applicant's criminal history. For the purposes of this subdivision "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge and shall include any suspended imposition of sentence, any suspended execution of sentence or any period of probation or parole; and

(3) Disclose if the applicant is listed on the employee disqualification list as provided in section 660.315.

6. An applicant who knowingly fails to disclose his or her criminal history as required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A misdemeanor if the provider knowingly hires or retains a person to have contact with patients or residents and the person has been convicted of, pled guilty to or nolo contendere in this state or any other state or has been found guilty of a crime, which if committed in Missouri would be a class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection 3 of section 198.070, RSMo, or section 568.020, RSMo.

7. Any in-home services provider agency or home health agency shall be guilty of a class A misdemeanor if such agency knowingly employs a person to provide in-home services or home health services to any in-home services client or home health patient and such person either refuses to register with the family care safety registry or is listed on any of the background check lists in the family care safety registry pursuant to sections 210.900 to 210.937, RSMo.

8. The highway patrol shall examine whether protocols can be developed to allow a provider to request a statewide fingerprint criminal records review check through local law enforcement agencies.

9. A provider may use a private investigatory agency rather than the highway patrol to do a criminal history records review check, and

alternatively, the applicant pays the private investigatory agency such fees as the provider and such agency shall agree.

10. Except for the hiring restriction based on the department of health and senior services employee disqualification list established pursuant to section 660.315, the department of health and senior services shall promulgate rules and regulations to waive the hiring restrictions pursuant to this section for good cause. For purposes of this section, "good cause" means the department has made a determination by examining the employee's prior work history and other relevant factors that such employee does not present a risk to the health or safety of residents.

(L. 1996 H.B. 1362, A.L. 1997 S.B. 358, A.L. 1998 H.B. 1046 merged with H.B. 1907, A.L. 2003 S.B. 556 & 311, A.L. 2003 2nd Ex. Sess. S.B. 4)

660.320. Prohibition against disclosure of reports, exceptions – employment security provided reports upon request.

1. Reports confidential under section 198.070, RSMo, and sections 660.300 to 660.315 shall not be deemed a public record and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name of the complainant or any person mentioned in the reports shall not be disclosed unless:

(1) The complainant, resident or the in-home services client mentioned agrees to disclosure of his or her name;

(2) The department determines that disclosure is necessary in order to prevent further abuse, neglect, misappropriation of property or funds, or falsification of any documents verifying service delivery to an in-home services client;

(3) Release of a name is required for conformance with a lawful subpoena;

(4) Release of a name is required in connection with a review by the administrative hearing commission in accordance with section 198.039, RSMo;

(5) The department determines that release of a name is appropriate when forwarding a report of findings of an investigation to a licensing authority; or

(6) Release of a name is requested by the division of family services for the purpose of licensure under chapter 210, RSMo.

2. The department shall, upon request, provide to the division of employment security within the

department of labor and industrial relations copies of the investigative reports that led to an employee being placed on the disqualification list.

(L. 1992 S.B. 573 & 634, A.L. 2003 S.B. 556 & 311)

660.321. Confidentiality of records, records disclosed, when. Notwithstanding any other provision of law, the department shall not disclose personally identifiable medical, social, personal, or financial records of any eligible adult being served by the division of senior services except when disclosed in a manner that does not identify the eligible adult, or when ordered to do so by a court of competent jurisdiction. Such records shall be accessible without court order for examination and copying only to the following persons or offices, or to their designees:

(1) The department or any person or agency designated by the department for such purposes as the department may determine;

(2) The attorney general, to perform his or her constitutional or statutory duties;

(3) The department of mental health for residents placed through that department, to perform its constitutional or statutory duties;

(4) Any appropriate law enforcement agency, to perform its constitutional or statutory duties;

(5) The eligible adult, his or her legal guardian or any other person designated by the eligible adult; and

(6) The department of social services for individuals who receive Medicaid benefits, to perform its constitutional or statutory duties.

(L. 2003 S.B. 556 & 311)

ADULT DAY CARE PROGRAM

660.400. Definitions. As used in sections 199.025, RSMo, and 660.403 to 660.420, unless the context clearly indicates otherwise, the following terms mean:

(1) "Adult", an individual over the age of eighteen;

(2) "Adult day care program", a group program designed to provide care and supervision to meet the needs of functionally impaired adults for periods of less than twenty-four hours but more than two hours per day in a place other than the adult's own home;

(3) "Adult day care provider", the person, corporation, partnership, association or organization

legally responsible for the overall operation of the adult day care program;

(4) "Department", the department of social services;

(5) "Director", the director of the division of aging;

(6) "Division", the division of aging;

(7) "Functionally impaired adult", an adult who by reason of age or infirmity requires care and supervision;

(8) "License", the document issued by the division in accordance with the provisions of sections 199.025, RSMo, and 660.403 to 660.420 to an adult day care program which authorizes the adult day care provider to operate the program in accordance with the provisions of sections 199.025, RSMo, and 660.403 to 660.420 and the applicable rules promulgated pursuant thereto;

(9) "Participant", a functionally impaired adult who is enrolled in an adult day care program;

(10) "Person", any individual, firm, corporation, partnership, association, agency, or an incorporated or unincorporated organization regardless of the name used;

(11) "Provisional license", the document issued by the division in accordance with the provisions of sections 199.025, RSMo, and 660.403 to 660.420 to an adult day care provider which is not currently meeting the requirements necessary to obtain a license;

(12) "Related", any of the following by blood, marriage or adoption: parent, child, grandchild, brother, sister, half-brother, half-sister, stepparent, uncle, aunt, niece, nephew, or first cousin;

(13) "Staff participant ratio", the number of adult care staff required by the division in relation to the number of adults being cared for by such staff.

(L. 1984 H.B. 1131 - 4)

Revisor's note: Definitions contained in section 660.053 are also applicable to sections 660.400 to 660.420.

660.403. License required to operate day care program – forms – investigation – requirements – license validity period, provisional license issued, when. 1. It shall be unlawful for any person to establish, maintain, or operate an adult day care program, or to advertise or hold himself out as being able to perform any adult day care service, unless he has obtained the proper license.

2. All applications for licenses shall be made on forms provided by the division and in the manner prescribed by the division. All forms provided shall include a fee schedule.

3. The division shall conduct an investigation of the adult day care program, and the applicant, for which a license is sought in order to determine if such program is complying with the following:

(1) Local fire safety requirements or fire safety requirements of the division if there are no local codes;

(2) Local or state sanitation requirements;

(3) Local building and zoning requirements, where applicable;

(4) Staff/adult ratios required by the division; and

(5) Other applicable provisions of sections 199.025, RSMo, and 660.403 to 660.420 and all applicable rules promulgated pursuant thereto, including but not limited to:

(a) The applicant's ability to render adult day care;

(b) The proposed plan for providing adult day care;

(c) The proposed plan of operation of the adult day care program, so that, in the judgment of the division, minimum standards are being met to insure the health and safety of the participants.

4. Following completion of its investigation made pursuant to subsection 3 of this section and a finding that the applicant for a license has complied with all applicable rules promulgated pursuant to sections 199.025, RSMo, and 660.403 to 660.420 the division shall issue a license to such applicant. Such license shall be valid for the period designated by the division, which period shall not exceed two years from the date of issuance, for the premises and persons named in the application.

5. Each license issued under sections 199.025, RSMo, and 660.403 to 660.420 shall include the name of the provider, owner and operator; the name of the adult day care program; the location of the adult day care program; the hours of operations; the number and any limitations or the type of participants who may be served; and the period for which such license is valid.

6. The division may issue a provisional license to an adult day care program that is not currently meeting requirements for a license but which

demonstrates the potential capacity to meet full requirements for license; except that, no provisional license shall be issued unless the director is satisfied that the operation of the adult day care program is not detrimental to the health and safety of the participants being served. The provisional license shall be nonrenewable and shall be valid for the period designated by the division, which period shall not exceed six months from the date of issuance. Upon issuance of a regular license, a day care program's provisional license shall immediately be null and void.

660.405. Exceptions to licensure requirements for adult day care centers. 1. The provisions of sections 199.025, RSMo, and 660.403 to 660.420 shall not apply to the following:

(1) Any adult day care program operated by a person in which care is offered for no more than two hours per day;

(2) Any adult day care program maintained or operated by the federal government except where care is provided through a management contract;

(3) Any person who cares solely for persons related to the provider or who has been designated as guardian of that person;

(4) Any adult day care program which cares for no more than four persons unrelated to the provider;

(5) Any adult day care program licensed by the department of mental health under chapter 630, RSMo, which provides care, treatment and habilitation exclusively to adults who have a primary diagnosis of mental disorder, mental illness, mental retardation or developmental disability as defined;

(6) Any adult day care program administered or maintained by a religious not_for_profit organization serving a social or religious function if the adult day care program does not hold itself out as providing the prescription or usage of physical or medical therapeutic activities or as providing or administering medicines or drugs.

2. Nothing in this section shall prohibit any person listed in subsection 1 of this section from applying for a license or receiving a license if the adult day care program owned or operated by such person conforms to the provisions of sections 199.025, RSMo, and 660.403 to 660.420 and all applicable rules promulgated pursuant thereto.

660.407. Right to enter premises for compliance inspections or to investigate complaints – failure to permit, effect. 1. The director, or his authorized representative, shall have the right to enter the premises of an applicant for or holder of a license at any time during the hours of operation of a center to determine compliance with provisions of sections 199.025, RSMo, and 660.403 to 660.420 and applicable rules promulgated pursuant thereto. Entry shall also be granted for investigative purposes involving complaints regarding the operations of an adult day care program. The division shall make at least two inspections per year, at least one of which shall be unannounced to the operator or provider. The division may make such other inspections, announced or unannounced, as it deems necessary to carry out the provisions of sections 199.025, RSMo, and 660.403 to 660.420.

2. The applicant for or holder of a license shall cooperate with the investigation and inspection by providing access to the adult day care program, records and staff, and by providing access to the adult day care program to determine compliance with the rules promulgated pursuant to sections 199.025, RSMo, and 660.403 to 660.420.

3. Failure to comply with any lawful request of the division in connection with the investigation and inspection is a ground for refusal to issue a license or for the suspension or revocation of a license.

4. The division may designate to act for it, with full authority of law, any instrumentality of any political subdivision of the state of Missouri deemed by the division to be competent to investigate and inspect applicants for or holders of licenses.

(L. 1984 H.B. 1131 7)

660.409. Fee for license or renewal, limitation. Each application for a license, or the renewal thereof, issued pursuant to sections 199.025, RSMo, and 660.403 to 660.420 shall be accompanied by a nonrefundable fee in the amount required by the division. The fee, to be determined by the director of the division, shall not exceed one hundred dollars and shall be based on the licensed capacity of the applicant.

(L. 1984 H.B. 1131 8)

660.411. Division to assist applicants or holders of licenses. The division shall offer technical assistance or consultation to assist applicants for or holders of licenses or provisional licenses in meeting the requirements of sections 199.025, RSMo, and 660.403 to 660.420, staff

qualifications, and other aspects involving the operation of an adult day care program, and to assist in the achievement of programs of excellence related to the provision of adult day care.

(L. 1984 H.B. 1131 9)

660.414. Inspections, when – refusal to permit access, court order issued when – injunction authorized. 1. Whenever the division is advised or has reason to believe that any person is operating an adult day care program without a license, or provisional license, or that any holder of license, or provisional license is not in compliance with the provisions of sections 199.025, RSMo, and 660.403 to 660.420, the division shall make an investigation and inspection to ascertain the facts. If the division is not permitted access to the adult day care program in question, the division may apply to the circuit court of the county in which the program is located for an order authorizing entry for inspection. The court shall issue the order if it finds reasonable grounds necessitating the inspection.

2. If the division finds that the adult day care program is being operated in violation of sections 199.025, RSMo, and 660.403 to 660.420, it may seek, among other remedies, injunctive relief against the adult day care program.

(L. 1984 H.B. 1131 10)

660.416. License denied – suspended – revoked – hearing procedure – appeals. 1. Any person aggrieved by an official action of the division either refusing to issue a license or revoking or suspending a license may seek a determination thereon by the administrative hearing commission pursuant to the provisions of section 161.272, RSMo, et seq.; except that, the petition must be filed with the administrative hearing commission within thirty days after the mailing or delivery of notice to the applicant for or holder of such license or certificate. When the notification of the official action is mailed to the applicant for or holder of such a license, there shall be included in the notice a statement of the procedure whereby the applicant for or holder of such license may appeal the decision of the division before the administrative hearing commission. It shall not be a condition to such determination that the person aggrieved seek a reconsideration, a rehearing or exhaust any other procedure within the division.

2. The administrative hearing commission may stay the revocation or suspension of such certificate or license, pending the commission's findings and determination in the cause, upon such conditions as the commission deems necessary and appropriate

including the posting of bond or other security; except that, the commission shall not grant a stay or if a stay has already been entered shall set aside its stay, if, upon application of the division, the commission finds reason to believe that continued operation of the facility to which the certificate or license in question applies pending the commission's final determination would present an imminent danger to the health, safety or welfare of any person or a substantial probability that death or serious physical harm would result. In any case in which the division has refused to issue a certificate or license, the commission shall have no authority to stay or to require the issuance of a license pending final determination by the commission.

3. The administrative hearing commission shall make the final decision as to the issuance, suspension, or revocation of a license. Any person aggrieved by a final decision of the administrative hearing commission, including the division, may seek judicial review of such decision by filing a petition for review in the court of appeals for the district in which the adult day care program to which the license in question applies is located. Review shall be had in accordance with the provisions of sections 161.337 and 161.338, RSMo.

(L. 1984 H.B. 1131 11)

660.418. Rules, authority, procedure. The director of the division shall have the authority to promulgate rules pursuant to this section and chapter 536, RSMo, in order to carry out the provisions of sections 199.025, RSMo, and 660.403 to 660.420. No rule or portion of a rule promulgated under the authority of section 199.025, RSMo, and sections 660.403 to 660.420 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

(L. 1984 H.B. 1131 12, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3)

*Original rolls contain "660.430". This is an apparent typographical error.

660.420. Violations, penalties. 1. Any person who violates any provision of sections 199.025, RSMo, and 660.403 to 660.420, or who, for himself or for any other person, makes materially false statements in order to obtain a certificate or license, or the renewal thereof, issued pursuant to sections 199.025, RSMo, and 660.403 to 660.420, shall be guilty of a class A misdemeanor.

2. Any person who is convicted pursuant to this section shall, in addition to all other penalties provided by law, have any license issued to him

under sections 199.025, RSMo, and 660.403 to 660.420 revoked, and shall not operate, nor hold any license to operate, any adult day care program, or other entity governed by the provisions of sections 199.025, RSMo, and 660.403 to 660.420 for a period of three years after such conviction.

(L. 1984 H.B. 1131 13)